Raising standards in retirement housing

ASSOCIATION OF RETIREMENT HOUSING MANAGERS

Private Retirement Housing

Code of Practice- England

DRAFT FOR CONSULTATION ONLY

February 2013

Contents

Introduction, Definitions and Abbreviations

This Code of Practice has been prepared by the Association of Retirement Housing Managers (ARHM) to promote best practice in the management of leasehold retirement properties in England which are specifically designed and designated for retired older people, sometimes called private retirement or extra care housing.
In most cases, this Code will also apply to the management of freehold bungalows and houses, which have been specifically designed and designated for retired, older people. In all cases, the owner will be obliged to pay a service charge in return for a package of management services provided by the manager/landlord.

Application of the Code

This Code applies in England only; it does not apply in Wales or Scotland for which the ARHM has separate codes of practice. It does not apply to rented sheltered housing but it does apply to private retirement housing whether managed by private companies or registered providers.
All corporate members of the ARHM should follow this Code; affiliate members of the ARHM do not manage private retirement housing and so are not required to follow this Code.

Structure

In this Code the word ‘must’ is used to indicate a statutory legal requirement or a requirement of common law and the word ‘should’ to indicate recommended or best practice. ***Such recommended best practice cannot, however, override the provisions of the lease or other written contractual agreement between the landlord and leaseholder.***

Where the word ‘must’ is accompanied by a reference to 'contract law’ in the margin, it indicates a provision common to most leases or written agreements. Where it is not, however, a provision of the lease, that ‘must’ becomes recommended or best practice.

It is assumed in using ‘must’ for the purposes of this code that the manager is also the landlord except where the Code expressly advises otherwise.

Where a statutory legal requirement appears in the Code it is accompanied in the margin by a reference to the provision of the relevant Act.

This Code is directed towards management organisations, including resident management companies and right to manage companies, who manage retirement housing developments, and these organisations are referred to as ‘managers’ throughout this Code. Manager as used in this Code does not refer to a scheme manager or warden. The word ‘landlord’ is used to denote the person or organisation owning the freehold or superior leasehold interest in the property who has a defined legal relationship with the leaseholder

governed by the lease and relevant legislation. The manager and the landlord could be, and for private retirement housing often are, one and the same.

Enforcement

It is a condition of membership of the ARHM that members accept the Code and follow its requirements (subject to any existing restrictions in individual leases and the limitations set out below).

Legal Status of the Code

This Code (up to and including Appendix 3) has been approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) (as amended by the 2002 Act, Schedule 9(11)). This Section allows the Secretary of State to approve codes designed to promote desirable practices in relation to any matters concerned with the management of residential property.
Section 87 of the 1993 Act provides that failure to comply with the provisions of a code approved by the Secretary of State does not, of itself, cause a person to be liable to any proceedings. However, in any proceedings before a court or tribunal any such approved code shall be admissible in evidence and, any provision of any such approved code which appears to the court or tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

However, it should be pointed out that the procedure whereby leaseholders can seek a new manager under the Landlord and Tenant Act 1987 (the1987 Act), using the code as evidence, does not apply where the landlord is a Registered Provider.

The Approval of Codes of Management Practice (Residential Property) (England) Order 200? No. ?????? brings the Code into force from ……..

Guidance for Registered Providers

Registered providers that manage private retirement housing not only have to have regard to this Code, but also the Regulatory Framework of the Regulation Committee of the Homes and Communities Agency.
The Regulatory Framework contains the fundamental obligations of housing associations which are registered providers in meeting the regulatory requirements.

Monitoring

The ARHM will monitor the effectiveness of this Code and periodically review it. Written comments on the content of the Code are welcome. ARHM members are subject to checks on their compliance with the Code and the ARHM operates a complaints handling procedure that may be used by

lessees of its members if they have exhausted the complaints procedure of the member concerned.

Acknowledgements

The Code has been the subject of widespread consultation with leaseholders, housing, professional and residents' representatives and organisations as well as with ARHM member organisations. The Association is most grateful for the advice and support it has received in the preparation of this Code.

Disclaimer

The Code only applies to properties in England and does not purport to be a comprehensive statement of law. No liability can be accepted by the ARHM for errors or omissions or for any loss or damage sustained by anyone acting in accordance with this Code. If readers are in any doubt about their rights or obligations, they should seek specialist advice from organisations like Age UK (Advice Services) or the Leasehold Advisory Service (LEASE) or consult a solicitor.

Definitions

In this Code the following definitions apply:

Contract Law

The law which binds parties to a contract (or lease) to meet the conditions of that contract (or lease). In this Code, where the word ‘must’ in the text is accompanied by a reference to ‘contract law’ in the margin, this indicates a provision common to most leases and therefore a ‘contract law’ requirement. Where it is not however, a provision of a particular lease, that ‘requirement’ becomes recommended or best practice.

Gender etc.

References to ‘he’, ‘his’ or ‘him’ cover also ‘she’ or ‘her’ and may also include the plural, and words in the plural usually include the singular.

Landlord

The landlord is the person or organisation owning the freehold or superior leasehold interest in the property or scheme who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord may or may not be the manager. The landlord may also be called the ‘lessor’ or ‘freeholder’ but in this Code the term ‘landlord’ is used. The landlord may be a resident management company named in a lease or a right to manage company that has taken over the landlord’s management functions.

Lease

A written, witnessed, legal document which transfers from the landlord to the leaseholder the exclusive possession (i.e. the leasehold) of certain property for a fixed period of time (such as 99 or 125 years). The terms of the lease fix the rights of the landlord and leaseholder and cannot usually be changed without the agreement of all parties, or an application to a Leasehold Valuation Tribunal for a variation. If a service charge or ground rent is to be paid they must be provided for by the lease.

Leaseholder

The person who in law has the right to exclusive possession of property under a lease. A leaseholder may also be called a 'lessee', or 'owner' or 'tenant' but in this Code the term leaseholder is used exclusively. In retirement housing the leaseholder is usually the resident of the property but need not be. For example, the son or daughter may take a lease of a property so that an elderly parent can live there.

Leaseholders' Handbook

The Leaseholders' Handbook is the document that contains essential information for purchasers and leaseholders of retirement housing, the contents of which are set out in this Code.

Manager

The person or organisation having day-to-day control of the management of the retirement estate or development is called the 'manager'. This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, a group of flat owners who have formed themselves into a formal management or maintenance company, or a company formed to exercise the right to manage. Where the manager levies a charge for costs, overheads etc, it is called a management fee in this Code (see Chapter 3). . The manager is different to the "Scheme Manager" as defined below. The manager is a person or organisation responsible for the provision of all the services under the lease. The Scheme Manager provides support to residents and assists in the management of the scheme, and is often called the warden or house manager.

Managing Agent

A person or an organisation that is employed by a landlord, Resident Management Company or Right to Manage Company to provide some or all management services required. A contract or agency agreement is usually signed between the parties to set out the duties of the agent.
The managing agent's responsibility is to the landlord, often referred to as the agent's client, and not directly to the individual lessees.

Registered Provider

This means a registered provider within the definition in the Housing and Regeneration Act 2008. Registered Providers include registered local authority and housing association landlords and private registered providers (such as not-for-profit housing associations and some for-profit bodies)

Reserve Fund

A fund created to build up sums of money that can be used to pay for large items of expenditure in the scheme. Sometimes also called contingency or sinking funds or long term maintenance funds. Such funds are raised either by contributions from service charges or by the operation of a formula in leases which provides for a fixed deduction from price to be made on any sale of a relevant dwelling. Reserve funds may become trust funds when raised from service charges.

Resident

The person who actually occupies the dwelling who may or may not be the leaseholder.

Residents' Association

A group of tenants, leaseholders or occupiers with or without a formal constitution or corporate status is called a residents' association.

Recognised Tenants' Association

There is also a legal term, recognised tenants' association, which applies when a tenants' or residents' association successfully applies to the landlord or the rent assessment panel to become formally recognised. This confers extra rights which are set out in Chapter 10 of this Code.

Resident Management Company (RMC)

The management of some long leasehold flats is run by companies whose only members or shareholders are the leaseholders of those blocks. The leaseholders or the board of directors appointed by the leaseholders then choose which managing agent to appoint and become the managing agent's client. Alternatively the leaseholders manage the common parts themselves. These companies may or may not be the landlord or freeholder of the block. In many leases the freeholder delegates all the management responsibilities to an RMC but keeps the freehold ownership.

Right to Manage Company (RTMCo)

A particular type of Resident Management Company formed by the leaseholders using a legal right to take over the management of their block of flats.

Retirement Housing

Housing which is purpose built or converted exclusively for sale to older people with a package of estate management services and which consists of grouped, self-contained accommodation with an emergency alarm, usually with communal facilities and normally with a scheme manager. It is often called private sheltered housing or extra care housing

Scheme

The term used for a group of retirement dwellings with a package of estate management services, also known as a development, estate or facility.

Scheme Manager

The person that provides support to residents, assists in the management of the scheme, and responds to emergency alarm calls. This person may also be called the warden, house manager, estate manager or resident secretary. The role may be a residential or non-residential one.

Service Charge

An amount paid or payable by a leaseholder as part of or in addition to rent in respect of services, repairs, maintenance, improvements, insurance or costs of management. The amount may vary according to the costs incurred or to be incurred and is normally a fixed proportion expressed in the lease of the total costs of running the scheme. Service charge for the purpose of the Landlord and Tenant Acts is defined in S.18 of the 1985 Act (as amended by S.150 and Schedule 9 of the 2002 Act).

Abbreviations

The following standard abbreviations are used throughout this Code.
The '1985 Act' means the Landlord and Tenant Act 1985(c.70)
The '1987 Act' means the Landlord and Tenant Act 1987(c.31).
The '1993 Act' means the Leasehold Reform, Housing and Urban Development Act 1993(c.28).
The '1996 Act' means the Housing Act 1996 (c.52).
The '2002 Act' means the Commonhold and Leasehold Reform Act 2002(c.15).
'ARHM' means the Association of Retirement Housing Managers.
'LEASE' means the Leasehold Advisory Service.
'LVT' means a Leasehold Valuation Tribunal.
Any references to legislation in this Code are references as amended at the time that the Code is published.

1. Principles of Management in This Code

Managers should:

- Behave in an honest and fair manner and act with integrity.
- Be transparent in all financial dealings
- Provide equality of service to everyone and not discriminate unfairly against any person.
- Not profit from the provision of services required in leases and charged to leaseholders apart from a reasonable management fee that includes a profit element or surplus for registered providers, or direct provision of services by them or associated companies which have been competitively tendered
- Comply with this code of practice and any other legal or regulatory obligations
- Comply with the decision of any ombudsman service of which it is a member and decisions of the Courts which set precedents for managers
- Hold professional indemnity cover
- Protect leaseholder's service charge monies by keeping them separate from any other monies they hold
- Cooperate in a timely manner with outside agencies that are advising leaseholders

Limitations of This Code of Practice

The manager shall comply with this code unless:

- The code conflicts with the terms of the leases of a scheme in which case the lease shall be followed.
- The code conflicts with the terms agreed between a manager acting as an agent and the landlord, but only for management agreements entered into before the commencement of this edition of the code.
- The code conflicts with the lawful instructions given by a landlord to a manager acting as an agent.
- The manager may depart in exceptional or emergency circumstances from a 'should' in this code if it believes it is a better course of action to do so. If the manager chooses to do this then an explanation should be given to leaseholders why. Further in any complaint made by a leaseholder about such a departure it will be up to the manager justify why a departure was made.

2. The Statement of Manager's Duties, Management Agreements and Fees

The Statement of Duties

2.1 All leaseholders should be made aware of the duties that the manager will undertake and the level of management fees and any other charges that the manager may receive for those duties.

2.2. The manager should provide a statement of duties which every leaseholder may see- this may be done by electronic means where appropriate and may be part of a leaseholders' handbook.

2.3. The statement should include the following:

- A list of the duties that the manager will provide for leaseholders in return for the management fee.
- A list of other duties that the manager will provide relating to services in the lease for which an additional fee may be chargeable.
- A list of other charges which may be payable by leaseholders not related to the service charge parts of the leases.
- How and when the fees and charges may be reviewed.
- The term of any management agreement or contract entered into.
- A declaration of any commissions or other profits being taken by the manager arising from the duties carried out including insurance commissions.

2.4. The following duties should be provided for within the management fee but other duties may be added if the manager wishes.

- Opening and administering bank accounts.
- Preparing and distributing service charge budgets/estimates.
- Collecting service charges.
- Accounting for service charges prior to examination by an independent accountant.
- Providing information to auditors for the production of annual accounts.
- Collecting routine service charge arrears but not taking further action requiring legal work or appearance at LVT's.
- Providing management information to residents.
- Liaising with residents associations (liaison beyond that which is normal service level may be charged as an extra).
- Providing professional indemnity insurance for the manager.
- Employing management staff (excluding estate-based staff).
- Entering into and managing maintenance contracts.
- Inspecting the property to check condition and deal with any necessary repairs other than those of a major nature.
- Periodic health and safety checks but not specialist checks and tests.

- Holding annual meetings with residents.
- Regular visits to supervise scheme managers.
- Recruiting and training of scheme managers excluding the cost of advertisements and agency fees.
- Fees for specialist advice on assessment of major repairs and decoration.
- Providing copy documents including insurance policies, copies of invoices and receipts.
- Keeping records of residents and tenancy details.
- Keeping landlords advised on management policy when working as an agent.
- Consultation on major works and long term agreements.
- Preparing specifications for minor works and services.
- Working with advice agencies and ombudsmen.

The requirement to provide a list of duties for the management fee and what may be charged for additionally is also a requirement in the Leaseholders' Handbook. See Chapter 3 of this Code.

Management Agreements or Contracts

2.5 Where managers are acting as agent for a landlord, residents management company or right to manage company they should enter into a written management agreement which sets out the services and fees. The ARHM provides a model management agency agreement suitable for retirement housing schemes.

2.6 The agreement should be offered to the landlord/RMC or RTMCo /developer for approval and meet the following requirements:

- Include a list of duties to be provided in return for the management fee.
- Include other duties relating to services in the leases for which additional fees may be charged.
- Include any administration charges that may be levied on individual lessees in return for administration not related to the service charges.
- Comply with the Provision of Services Regulations 2009
- Declare any commissions or any other sources of income which the manager intends to take arising out of the agreement if entered into. The express approval of the client must be received for these.
- Specify the level of authority to instruct contractors and commit expenditure from service charge monies.
- Include a list of what documents and funds will be handed over to the landlord within what timescales if the agreement is terminated.
- Contain an undertaking by both parties that they agree to abide by this code.

Calculation of Management Fees

.19 of 1985 Act as mended by Sch. 14 to 002 Act

2.7 Managers must charge management fees which are reasonable having regard to the services provided.

2.8 Managers should calculate management fees as an average cost per unit of accommodation. Managers will not use any other method of calculating management fees unless **the original lease** entered into before **the first published ARHM code came into force (1st January 1996)** specifically provides for another method of collection or unless it can be shown that such an arrangement does not operate to the potential disadvantage of leaseholders..

The use of an average to calculate fees does not mean managers shall not apportion fees to leaseholders according to the basis set out in leases. Managers must apportion the total fees for the scheme according to the fractions, percentages or other rules set out in leases.

Managers should identify management fees separately in service charge budgets and accounts presented to leaseholders and residents.

Limits on Management Fees for Some Registered Providers

2.9 The Government is responsible for considering and approving any increases submitted in respect of the limit on management fees chargeable for private retirement schemes managed by some Registered Providers, in order to safeguard residents on schemes built with public subsidy.

2.10 New schemes with leases sold for the first time after April 2001 are not subject to these limits. However the limits apply to all existing leases on schemes run by some housing associations and in receipt of public subsidy (housing association or social housing grant) sold for the first time prior to April 2001.

2.11 The limits are per unit, are set on a flat-rate basis and do not take account of different property sizes or types of schemes. Where these limits apply no individual leaseholder should pay more than the limit for those management charges that are covered by the limit.

3. The Leaseholders' Handbook

3.1. Managers should ensure that all purchasers of dwellings that they manage are provided with a leaseholders' handbook that should contain at least the information set out below. Managers should also give all existing residents access to the current version of the handbook for their scheme, and provide a copy to all recognised tenants' associations. The handbook should be regularly reviewed and updated when necessary. Electronic service of the handbook is acceptable where appropriate.

3.2. The Leaseholders' Handbook should contain the following information, in a minimum of 12 point font, which should be clearly and fully described using plain English. The handbook may also be called a purchasers information pack or owners or residents handbook, or such other name as the manager thinks appropriate. A generic version of the handbook for the manager's schemes pointing out that each scheme may vary in detail is an acceptable way of producing a leaseholders' handbook. Managers should offer assistance in understanding this code of practice when required.

- The name and address of the landlord and/or freeholder, or resident management company, right to manage company and managing agent.
- Details of the management organisation, its role and whether it owns the freehold of the scheme or is party to the lease in any way
- A description of the duties of the scheme manager, including hours of service, and how back-up support or emergency cover is provided during the periods of absence, together with details of the emergency alarm system and how it works
- A description of all the services for which the leaseholder is being charged including buildings insurance
- How leaseholders should report repairs and target time scales for the completion of repairs.
- A full, clear, complete breakdown of all periodic or one-off charges that the leaseholder will be expected to pay, together with any necessary explanations including a time scale for their review.
- A summary of the legal rights of leaseholders
- Information on consultation and complaints procedures and on residents' associations
- A explanation of the main terms of the lease or freehold transfer including the landlord's obligations
- Any detailed rules concerning the management of the estate
- Re-sale arrangements
- The handbook should indicate how copies of the management organisation's policies on equal opportunities, confidentiality and access to information may be obtained.
- Details of organisations providing advice to leaseholders such as Age UK, LEASE and Citizens Advice.
- Information on the manager's membership of the ARHM if a member, including the ability to take a complaint to the ARHM.

4.0 Protection for Service Charge Funds

4.1. To protect leaseholders' service charge funds managers should hold them separately to any other monies held including any ground rents.

Protection for Private Schemes

4.2 Managers that are not registered providers, which include RMCos and RTMCos, must hold service charge funds in trust. S42 1987 Act.

4.3 To comply with this requirement, managers should open one or more bank accounts for lessees' service charge funds for each scheme. It is not acceptable to have one pooled account for the service charge funds for several schemes...

4.4 If the manager is acting as agent then it should be a decision of the landlord as to what bank account arrangements it prefers.

4.5 The separate bank account for service charges should have in its title the words client, trust or the name of the scheme or landlord.

4.6 The manager should obtain from the bank holding that account a letter confirming that the account is a trust account. There need not be separate letters for every account with the same bank; one letter per bank is sufficient.

Protection if the Manager is a Registered Provider

4.7 Managers that are registered providers are not required by statute to hold service charge funds in trust if they are the landlord of a scheme. But they should provide the same degree of protection as for private schemes by following paras 4.3-4.6 above.

4.8. If a registered provider is acting as agent for a private landlord then it must comply with the requirement to hold service charge funds in trust above.

Requirement to Inform Lessees of Bank Accounts

4.9 Managers should inform any client and lessees of the arrangements made to protect service charge funds, without waiting for a request. A note to the annual service charge account should explain the bank account details for service charge monies.

Benefit of Any Interest Earned

4.9 Any interest earned on service charge funds held by a manager belongs to that service charge account for the benefit of the scheme and is taxable-see page TSEM5710 in HMRC's Trusts, Settlements and Estates Manual.

Deficits and Service Charge Monies Held in Trust

4.10 It is a breach of trust to allow a service charge fund for a scheme to run in deficit if the requirement to hold monies in trust in S42 1987 Act

applies. Managers should monitor cash flow carefully and seek advice if schemes may go into deficit.

4.11 If a manager holds one bank account in which the service charge monies of several schemes are held, it is breach of trust to use the monies of one scheme to pay for expenditure on any other scheme.

4.12. It is possible for a loan to be made to fund service charge expenditure on a scheme that may go into deficit, but any loan must be with the consent of the landlord and the leaseholders should be informed of the terms of any loan arranged.

Reserve Funds

4.13 It is not a requirement to hold reserve funds in a separate bank account to other service charge monies unless required by the lease of a scheme or a landlord instructs a manager acting as agent to do so. But any reserve funds should be placed in an interest bearing bank account which may be the same account as that used for current income and expenditure.

5.0 Service Charge Accounts

Annual Service Charge Account to be given to all Leaseholders

5.1 All managers should provide an annual service charge account to every lessee within 6 months of the end of the relevant financial year.

5.2 The service charge account should include an income and expenditure account, a balance sheet and be prepared on accruals basis. Managers should follow the guidance in "Residential service charge accounts guidance on accounting and reporting in relation to service charge accounts for residential properties on which variable service charges are paid in accordance with a lease or tenancy agreement" issued by the Institute of Chartered Accountants in England and Wales.

5.3 The service charge account should include a note to explain the position of any reserves held; the amount held in cash and any debtors that mean the reserves are not fully funded.

Service Charge Accounts and RMC and RTMCo Accounts

5.3 A separate service charge account should be prepared to the annual accounts that all companies are required to prepare for Companies House. (Not all lessees need be members or shareholders these companies.)

Deficits and Surpluses in Service Charge Accounts

5.4 Managers should deal with surpluses and deficits according to the relevant leases.

S19(2) of 1985 Act

5.5 If the leases are silent as to the treatment of surpluses and deficits then the surplus must be credited to future payments of the leaseholders or repaid. Deficits should be billed with the next service charge bill or separately on demand.

5.6. Managers should not seek to transfer surpluses to a reserve fund unless the lease expressly allows for this. Contributions to reserve funds should be assessed only as part of the budgeted interim or advance service charges.

External Examination of Service Charge Accounts to Reassure Leaseholders

5.7 If the leases require the service charge accounts to be audited or certified in some way then the leases should be followed. If the exact

requirements of the lease are not followed then service charge deficits may not be recoverable.

5.8 The service charge accounts for every scheme should be subject to an external examination by an independent accountant unless the leases do not allow for the recovery of the cost and it is not proportionate to do so.

5.9 The external examination should follow the guidance in Technical Release 03/11 issued by the ICAEW-either an audit to ISO 800 standard or a report of factual findings. (The reference is 'Guidance on accounting and reporting in relation to service charge accounts for residential properties on which variable service charges are paid in accordance with a lease or tenancy agreement'.)

Right of Leaseholders to Scrutinise Expenditure

5.10 Managers should be transparent in the way that service charge monies are spent. Those monies do not belong to the manager or any landlord and are paid by leaseholders. Leaseholders should be given the right to scrutinise how the money has been spent.

5.11. The annual account and an examination of it by an independent external accountant offer some assurance to leaseholders. However managers should offer greater opportunity for scrutiny.

Scrutiny of Supporting Receipts and Invoices

5.12 Leaseholders should be offered access to view supporting receipts, invoices and bank statements to the annual service charge accounts. Managers should not require leaseholders to use the statutory right to inspect under S22 of the 1985 Act; greater opportunity for scrutiny should be offered.

5.13 There is not one correct way to offer scrutiny to leaseholders and a variety of methods may be appropriate, but whatever method is offered must not require leaseholders to travel to the offices of the manager if they do not wish to do so. Leaseholders who request copies of documents to be sent to them should be offered this although a reasonable charge for copies may be made. Making documents available by electronic means is appropriate where access to them is available to the leaseholders making the request.

Scrutiny if the Landlord is an RMC or RTMCo and the Manager is an Agent

5.14 If the landlord is an RMCo or RTMCo then the directors of that company will decide what level of scrutiny to the leaseholders and themselves is required. It is normal for regular reports on expenditure to be provided to the directors by the manager acting as agent.

6.0 Variation of Special Services

6.1 Where a service is expressly set out in the lease for a scheme then the following procedures do **not** apply. The procedures for variation of leases by reference to an LVT are set out in sections 35-40 of the 1987 Act.

Definition of Special Services

6.2 Special services are

- the scheme manager service
- the emergency alarm system and link to a monitoring centre
- the communal facilities including the residents' lounge, guest suite, laundry and scheme manager's office.

Restriction on Variation of Special Services

6.3 Unless a proposed change would require a variation to the lease, you should not vary a special service without:

- Holding a meeting to inform and explain the proposal to vary the special service; and
- Holding a secret written ballot of all leaseholders on the motion to vary the special service; and
- Achieving a result for the motion of at least 66% of those voting (and this figure shall be at least 51% of those eligible to vote) AND the number of votes counted against the motion shall be not more than 25% of those leaseholders eligible to vote.

The Meeting to Inform and Explain

6.4 Managers should hold a meeting at a time and place convenient to leaseholders, to which all leaseholders should be invited and should give a minimum of 2 weeks' notice of the meeting.

6.5 Managers should issue documents explaining the proposal(s) and any documents/papers should arrive at least 7 days in advance of the meeting.

6.6 Any documents should be written in simple language and should contain:

- A summary
- The objective of the proposal to vary the special service
- The issue to be addressed
- Who is likely to be affected and how
- Various options, backed up by arguments for and against them, and allowing for other options to be put forward
- A full explanation of the costs of the various options
- The name, address and telephone number of a person with whom

leaseholders can discuss the issues prior to the meeting.

The Ballot

6.7 The ballot should be a secret postal vote.

6.8 The ballot paper should contain the resolution to be considered. It should state clearly the majority required to approve (as set out in paragraph 6.3 above), who will count the ballot and how the count will take place. The period allowed for votes to be returned should be a minimum of 1 calendar month.

6.9 The ballot papers should be returned to and counted by a person or organisation independent of the landlord, manager, residents' association, and any leaseholder. It should not be possible for the votes of leaseholders to be identified by other leaseholders or managers.

6.10 Each leaseholder may cast one vote. Joint leaseholders will receive one ballot paper. Where the leaseholder is not resident the ballot paper should be sent to any alternative address provided.

6.11 The manager should inform all leaseholders (in writing by letter or a notice on the scheme notice board) of the result of the ballot including the total number of votes counted for, counted against, the abstentions from voting on the motion, and any votes rejected from the count with the reason for rejection.

6.12 The ARHM has issued a good practice note for its members about the variation of special services which members should refer to.

7.0 Appointment of Contractors and Associated Companies

7.1 The appointment of contractors to provide works or services should be transparent and managers should not profit from their appointment.

7.2 Managers must not take any payments or benefits in kind from contractors appointed to provide services. It is an offence to offer promise or give a bribe, and to request, agree to receive or accept a bribe. (Bribery Act 2012)

Approved Lists of Contractors

7.3 Managers are required to ensure the competence of contractors. In order to do so managers should make use of publicly available lists of validated contractors rather than seek to carry out all of the checks themselves for a fee.

7.4 If a manager retains a list of approved contractors then, if a fee is charged for admission to that list, the fee should be such as to cover only the cost of checking on the contractor. Fees should not include any profit element.

Use of Competitive Tendering

7.5 Contracts for qualifying long term agreements and qualifying works should only be awarded after competitive tendering has taken place.

Scrutiny of Tenders Received

7.6. All tenders should be received in sealed envelopes provided by the manager or, if received electronically, in confidential manner and not be opened until the due date.

7.7 If the manager is also the landlord the tenders should be documented in a tender book and signed as accurate by a responsible person or in an equivalent electronic format.

7.8 The tender book or other records should be available for inspection by any landlord and any leaseholder on request.

Associated Companies and Associates

7.9 Associated companies and associates as used here includes the following:

- Companies in the same group as the manager e.g. insurance broker, entry phone equipment supplier
- Companies not in the same group but in which any employee or director of the manager has an equity stake e.g. gardening, cleaning.

- Parts of the same company or organisation which offer services to leasehold schemes e.g. company secretarial work, emergency call monitoring, direct labour organisations.
- Associate means that individual's spouse, civil partner, child, step child.

7.10 If a manager intends to offer an associate or associated company as a possible contractor for services then that appointment must be subject to competitive tender whatever the estimated cost of that contract. No contract to an associated company should be for longer than a three year period.

7.11 Contracts once awarded to associates or associated companies should be regularly reviewed to ensure value for money is being obtained. Retendering at least every 3 years is appropriate unless the leaseholders are content with the service, in which case a benchmarking exercise should still be undertaken and the results made available to leaseholders and any landlord.

8.0 Handling Insurance and the Disclosure of Commission

Regulation of Insurance Activities

.19 of Financial ervices & Markets ct 2000

8.1 Managers must not advise, arrange or administer insurance or handle claims unless they are authorised to do so under the rules of the Financial Conduct Authority. This requirement does not apply to Registered Providers.

Handling of Insurance

8.2 No manager or any associated company of that manager shall place insurance on behalf of a landlord or leaseholders in order to increase the receipt of any commission or other profit or income of any kind to it or any other party.
It is an accepted legal principle that in dealing with service charge monies, the landlord and/or manager shall not profit from those monies other than to take a reasonable commission for carrying out insurance-related activities which may include a profit or surplus element. This principle is extended to any associated company of the manager or landlord.

Receipt and Disclosure of Commissions

8.3 Receipt of a commission or any other payment of any kind by a manager for landlord and leaseholders is permissible but only if:

- It is in receipt for services related to that activity of an equivalent value to the commission or other income received.
- The cost of providing those services is not also part of the manager's management fee.
- It is disclosed to any landlord before the manager acts for that client landlord and agreed in writing by the landlord as acceptable.
- It is disclosed as a percentage of the sum or premium payable, and also as a sum, to all leaseholders who pay the relevant charges that attract that commission –without the need for a request by any lessee- at least once per annum.
- The disclosure should also include details of the relevant authorisation held by the manager under the rules of the Financial Conduct Authority.
- Disclosure in the annual service charge account is acceptable.
- See also paragraph 7.2 of this Code.

9.0 Consultation with Leaseholders

9.1 Managers must consult over qualifying works and long term agreements. See below for details.

9.2 In addition all managers should seek to consult and inform leaseholders and residents if different to a greater degree than that required by statute. Managers should consider what arrangements are required to consult those leaseholders and residents who are frailer than others and for whom meetings may not be appropriate.

9.3 If a recognised residents association has been formed on a scheme the manager should agree with the association how it will consult and keep it informed of the manager's activities. See below for more details.

Annual General Meetings of Leaseholders

9.4 Where the manager is also the landlord or appointed by a landlord which is not a resident controlled company, the manager should hold at least one general meeting to which all leaseholders are invited which may include explanation of the annual budget and/or accounts for service charges.

9.5 A minimum of 2 weeks' notice of the annual meeting should be given to all leaseholders and papers for the meeting should be sent to leaseholders to arrive at least 7 days in advance of the meeting.

9.6 The meeting should be held at a time and place convenient for leaseholders and should be attended by a member of the manager's staff who is responsible for the setting of service charges, and is prepared to answer questions on the general management of the scheme and other relevant matters.

9.7 Managers should consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of leaseholders.

9.8 Managers should confirm in writing any commitments made at the meeting.

9.9 Where the manager is agent for an RMC/RTMCo then the arrangements for the level of consultation should be agreed with the directors of the company.

Consultation with Relatives of Leaseholders

9.10 Leaseholders may wish for relatives or other persons to represent their views at meetings or during consultations. Managers should allow leaseholders to nominate others to represent them. If managers wish that the leaseholder confirms a nominated in person in writing to them then that is acceptable

Consultation on Qualifying Works

S.20 of 1985 Act as amended by S.151 of 2002 Act

9.11 Managers must consult with leaseholders where it is proposed to carry out qualifying works costing more than the prescribed contribution. Failure to consult may mean that the expenditure incurred over the prescribed amount may not be recoverable.
Managers should informally consult with leaseholders before commencing the statutory requirements for major works to explain why proposed works are required and how they will be funded. The annual general meeting referred to in 9.4 above is appropriate for this consultation.

The Service Charges Consultation Requirements) England) Regulations 003 No. 1987

9.12 The "prescribed" contribution is more than £250 for any leaseholder. The figure may change subject to amendment by regulations.

9.13 Managers must give all leaseholders and recognised tenants' associations notice of intention to carry out the qualifying works. As part of this notice you must invite all leaseholders and recognised tenants' associations to nominate contractors for the works.

9.14 All leaseholders and recognised tenants' associations have 30 days to make comments on the proposed works and nominate contractors. Managers must have regard to these comments and seek estimates from nominees according to the detailed rules that apply. See the Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987 for details.

The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987

9.15 As a second stage of the consultation process, managers must supply the leaseholders and any recognised tenants' associations who are required to contribute to the costs of the works, with a further notice describing the works. This notice must give the costs of at least 2 estimates received and state where all of the estimates may be inspected. At least 1 of the 2 estimates must be from a firm or contractor wholly unconnected with the landlord. Wherever practical managers should obtain 3 estimates for works costing more than the prescribed amount. If a contractor nominated by leaseholders provides an estimate, then that must be 1 of the minimum of 2. The notice must also include a response to any comments made by leaseholders about the works after the first stage of consultation in paragraph 4.24.

9.16 Managers should declare to leaseholders and any recognised tenants' association, which estimates, if any, are from contractors with a connection to the landlord or the manager.

The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987

9.17 Managers must invite comments from leaseholders on the proposed works and estimates received, and give the name and address of the person in the UK to whom comments may be sent, giving at least 30 days for a reply from the date when the notice is given.

The Service Charges (Consultation Requirements) (England) Regulations 2003 No.1987

9.18 Managers must have regard to comments received before placing a contract for the works. Once you have entered into a contract managers must as soon as reasonably practical write to all leaseholders and recognised tenants' associations stating reasons for the choice of contractor, and replying to any observations received at the second stage of consultation see paragraph 4.25. Managers need not write in this fashion if the contract is placed with the person submitting the lowest estimate or with a nominated contractor.

9.19 If costs of major repairs carried out after consultation seem likely to overrun, or the nature of works to be undertaken changes after those works commence, then managers should consider carefully how to proceed again before committing further expenditure. A request for dispensation either before or after works are carried out may be appropriate.

9.20 Only a LVT can agree to dispense with the need to consult under section 20 of the 1985 Act. In the event of an emergency therefore, managers should adhere to as much of the consultation process as possible, whilst informing residents of the reasons for any emergency action as soon as possible. If the cost is to be recoverable and a dispute about consultation has arisen managers will need to seek a dispensation from a LVT and will have to satisfy the LVT that you acted reasonably.

S.20 ZA of 1985 Act

9.21 A LVT may agree to dispense with consultation if satisfied that it is reasonable to dispense with the requirements, and an application can be made to them before the works are carried out, or in the case of an emergency for example, either during or after the works where a dispute has arisen.

9.22 Where the landlord is a Registered Provider consideration needs to be given to adhering to public law for the purposes of procurement rules, and any contract for work that exceeds the appropriate threshold should be properly procured. Where the responsibility is not clear in respect of the procurement rules legal advice should be sought.

Consultation on Long Term Agreements

S.20 of 1985 Act as amended by S.151 of 2002 Act

The Service Charges (Consultation Requirements) (England)

9.23 Managers must consult with leaseholders when it is proposed to enter into an agreement of more than 12 months for the provision of a service. Consultation will only be required where the cost of the proposed agreement is estimated to exceed the prescribed amount of more than £100 per annum for any one leaseholder. This figure may change subject to amendment by Regulations.

9.24 Consultation must be in two stages. Before tenders are invited managers must send to all leaseholders and to the secretary of any

recognised tenants' association a notice of intention of entering into the agreement, explaining what is involved or where a detailed explanation can be inspected.

9.25 As part of the notice of intention managers must invite comments on the proposed agreement and invite any leaseholder or recognised tenants' association to nominate contractors for the service. At least 30 days to comment or nominate must be given. Managers must deal with any nominations made according to the detailed rules that apply which can be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 no. 1987.

9.26 After seeking tenders or estimates as the second stage managers must notify all leaseholders and recognised tenants' associations of proposals. At least 2 proposals describing the service to be provided, the estimated cost from a contractor and a response to any comments received at the first stage of consultation must be supplied. Managers must also inform them where all the estimates received can be inspected.

9.27 At least 1 of the proposals must be from a contractor wholly unconnected to the landlord. Wherever practical managers should obtain 3 estimates for agreements costing more than the prescribed amount. If a contractor nominated by leaseholders provides an estimate, then that must be one of the minimum of 2.

he Service Charges Consultation equirements) England) Regulations 003 No. 1987

9.28 Managers must declare to leaseholders and any recognised tenants' association, which estimates, if any, are from contractors with a connection to the landlord or manager.

he Service Charges Consultation equirements) (England) egulations 2003 No. 987

9.29 Managers must invite comments from leaseholders and any recognised tenants' association on the proposals, and give the name and address of the person in the U.K to whom comments may be sent. Managers must give at least 30 days for comments from the date when the notice of the proposals is given.

9.30 Managers must have regard to comments received before placing the long term agreement and, once the agreement is entered into you must provide a notice in writing within 21 days to all leaseholders and recognised tenants' associations setting out reasons for the choice of contractor and responding to any observations received at the second stage of consultation in paragraph 9.26. As an alternative the notice may state where the reasons and the response can be inspected. Managers do not need to send this final notice at all if the agreement has been entered into with a contractor nominated by leaseholders or the contractor with the lowest estimate.

10.0 Residents' Associations and Recognised Tenants' Associations

Encouraging Residents' Associations

10.1 Managers should have a formal commitment to encourage properly constituted and democratically run residents' associations at their schemes. It is recommended that managers supply literature to leaseholders giving guidance on how to set up and run an association. The ARHM has produced a model constitution for residents' associations that is available free of charge to managers and leaseholders.

10.2 Managers should recognise an association (subject to the landlord's agreement if required), which has a membership representing 51% or more of the leaseholders and other tenants on the scheme that contribute to the same costs by way of a variable service charge, and where the association has a proper constitution and elected officials. It is recommended that managers should retain details of the constitution, officials and membership and ask the association to supply details of any changes as they occur. Managers should give notice in writing to the secretary of the residents association that the association is a recognised tenants' association under S29 of the 1985 Act, and that such status confers certain legal rights

Recognised Tenants' Associations

.29 of 1985 Act

10.3 Alternatively to 10.2 above, residents' associations can apply to the Rent Assessment Panel for a certificate of recognition which will generally be given if the association has a membership of 60% or more of the residents, a proper constitution and elected officials. The residents' association will then become a recognised tenants' association which is a statutory expression under S29 of the 1985 Act and confers certain legal rights.

Legal Rights of Recognised Tenants' Associations

10.4 Managers should be aware that recognition of an association under S29 of the 1985 Act confers additional legal rights on it over and above those available to the individual leaseholder, whether the association was recognised voluntarily by the landlord or following application to a Rent Assessment Panel.

S.20 of 1985 Act as amended by S.151 of 2002 Act

10.5 In addition to individual leaseholders, managers must give recognised tenants' associations the opportunity to nominate contractors for qualifying works and long term agreements on the scheme and send a copy of the proposals to the secretary before going out to tender.

10.6 Managers must supply the secretary of a recognised tenants' association with a summary of insurance cover on request in writing.

S.21 & 22 of 1985 Act

10.7 The secretary of a recognised tenants' association may request a summary of relevant service charge costs incurred. Managers must also allow the secretary of a recognised tenants' association the opportunity to inspect the relevant accounts and receipts relating to a summary of costs.

.30B of 1985 Act

10.8 Where a landlord is served with a notice by a recognised tenants' association requiring him to consult that association on matters relating to the employment by him of a managing agent, he must inform the association of the name of the managing agent and duties that the managing agent discharges or will discharge, on his behalf and:

(a) allow the association 1 month to make observations on any proposed managing agent;

(b) allow the association a reasonable time to make observations on the manner in which an existing managing agent has been discharging his duties and on the desirability of his continuing to discharge them;

(c) specify the name and address in the United Kingdom of the person to whom observations should be sent; and

(d) have regard to the observations made by the association.

S.30B of 1985 Act

10.9 Recognised tenants' associations can also serve a notice on the landlord asking to be consulted about matters relating to the appointment of a managing agent. Where this is done the landlord would need to give the name of the proposed agent, the proposed duties that the agent is to discharge, and allow at least 1 month for observations to be made.

S.30B of 1985 Act

10.10 Where a notice has been served on the landlord under 10.8 or 10.9 above, a notice must be served on the recognised tenants association at least once in every 5 years specifying any changes to the managing agents obligations or duties since the last notice was served, allowing a reasonable period of time for observations to be made on the discharging of those obligations and duties, and on the desirability of the agent continuing to discharge them. However, this notice is not necessary if the association subsequently serves a notice withdrawing the request to be consulted.

.29 (2) & (3) of 1985 ıct

10.11 For recognised tenants' associations which have been recognised by the landlord, at least 6 months' notice must be given if they intend to withdraw recognition. Reasons for the withdrawal must be given in writing to the secretary of the association. Alternatively if the association was recognised by a Rent Assessment Panel, the recognition may be cancelled by the Panel at any time if there is good reason.

Good Relations with Residents' Associations

10.12 Managers should endeavour to maintain good working relationships between staff and residents' associations. Generally, good relations can be maintained by proper consultation and keeping associations up to date with any proposed changes or works. However when dealing with residents' associations, managers should also remember that they also have a responsibility to, and should maintain dialogue with, individual leaseholders.

10.13 Managers should regard the legal requirements about consultation with residents' associations as a minimum and seek to consult and advise associations on issues affecting the scheme other than minor day to day matters.

10.14 Managers are recommended to ensure that information held on residents' associations is reviewed and revised on an annual basis, and that they are informed of the residents that are members and those who have authority to speak on behalf of the association.

11.0 Handling Complaints

11.1. Managers should have a complaint handling procedure to deal with complaints from leaseholders, resident associations and any landlord clients about their services. Managers should at an early stage decide whether a contact by a leaseholder is to be handled as a complaint or not and inform the complainant of this fact. If the complainant wishes a matter to become a formal complaint then the manager should accept it as such.

11.2 The complaint handling procedure should state whom leaseholders should complain to in the first instance and the steps they should follow if satisfaction is not obtained at that stage. There should not be a requirement that all complaints should be put in writing by the complainant but all complaints should be recorded.

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11.3 There should be no more than 3 stages in the procedure and a full response should be received at each stage of the complaint handling procedure. The complaint handling procedure should set down reasonable target time scales for responding to the complaint at each stage of the procedure. The whole procedure should normally not take more than 8 weeks. If the manager is unable to respond for a good reason by the target timescales set the leaseholder should receive an explanation why.

OR

11.3 Managers should adopt a right first time approach to complaints received. There should be one stage only and a person at a senior level in the management organisation should be involved.

11.4 The complaint handling procedure should ultimately allow the complainant the right to a face-to-face hearing with a person or a panel at a senior level in the management organisation if that is what the complainant wants. A hearing by telephone or video conference may be an acceptable alternative.

11.5 The complainant should be allowed to be accompanied by a person of their choosing during any hearing arranged.

11.6. Managers should offer mediation and conciliation at no cost as an option for resolving complaints, to be available at any stage of their complaint handling procedure.

11.7 If the manager is acting as an agent then the complaint handling procedure should allow for the leaseholder to complain to the landlord if that is what they wish to do.

11.8 Managers should provide each leaseholder with an up to date copy of their complaint handling procedure on request or inform them where a copy can be obtained. This information may be supplied by electronic means.

11.9 Managers should train staff to welcome complaints and value them as a way to learn and improve services.

11.10 Managers should make leaseholders aware of other organisations which can provide advice, casework or take up complaints. E.g. Citizens Advice, LEASE, and Age UK (Advice Services). Managers should offer maximum cooperation with all recognised advice agencies that handle complaints and requests for information and carry out casework and with any other intermediary consulted by the leaseholder.

11.11 Managers should give all leaseholders access to an independent redress scheme if, after using the manager's procedure, they are still not satisfied.

S.51 of 1996 Act

11.12 Managers that are Registered Providers are required to become members of the Housing Ombudsman Service and must offer access to this independent redress scheme.

11.13 Managers that are not Registered Providers should become members of an independent redress scheme approved by the ARHM.

11.14 Managers must abide by the decisions of any Ombudsman Service of which they are members.

12.0 Service Charges and Ground Rent Collection

12.1 The terms of the lease will govern the frequency and method of service charge and ground rent collection and payment.

Budgeting of Service Charges

12.2 Managers should use proper care in the preparation of budgets using the best information available. Budgets should be reasonable taking into account such factors as the age and condition of the building and plant, and maintenance and other works anticipated. Managers should seek quotations or estimates from contractors wherever possible before fixing the budget.

Consumer Protection Act 1987

12.3 Managers must not give artificially low forecasts of service charges. In the case of new developments where warranties may replace contracts in the initial period, and should prepare the budget on the assumption of a normal full year's costs.

12.4 Managers should consult leaseholders and residents' associations on budgets, normally once a year, prior to any review of or increase or decrease in the service charge. Managers should hold an annual budget meeting at a time and place convenient to leaseholders, to which all leaseholders should be invited. Managers should give a minimum of 2 weeks notice of the meeting and send copies of the proposed budget to arrive at least 7 days in advance of the meeting. Managers should issue notes of these meetings which include confirmation of any commitments or budget changes made at the meeting (see also paragraphs 9.4 to 9.10 of this Code).

12.5 Managers should present budgets in a standard format compatible with the format of annual accounts to allow ease of comparison by leaseholders.

12.6 Managers should explain to leaseholders any significant variations between the current level of expenditure and the budget for the year following and give reasons.

Costs of Services for Unsold Homes Prior to Their First Sale –Void Service Charges

12.7 Managers should ensure that no contribution is sought from leaseholders to meet service costs attributable to unsold homes prior to the first sale of those units. Appropriate contributions to services charges, including reserve funds, for unsold homes prior to first sale

should be sought from the developer of a scheme. Managers should not enter into a management agreement that unfairly restricts contributions from developers for the cost of services for unsold homes prior to their first sale.

Collection of Ground Rents

S.166 of 2002 Act

12.8 Any demand for a ground rent must be done so in a specific manner prescribed by law. S166 of the 2002 Act and the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 no. 3096 (Amended on 26 April 2011 by a correction slip.) If a notice is not served the leaseholder is not liable to pay the ground rent. The notice must specify, amongst other things, the amount of rent due, the period to which the demand for rent relates, the name of the landlord and to whom the rent is payable, and the date on which it is payable. The notice must also contain information for leaseholders and landlords in the form of notes as set out in the regulations.

S.166 of 2002 Act

12.9 The date on which the ground rent is payable must not be less than 30 days or more than 60 days -
(a) after the day on which the notice is given; or
(b) before the date on which it would be due as set out in the lease.

12.10 If the date that the ground rent is payable (because of the 30 days rule in paragraph 12.9 above) is different from the date in accordance with the lease, then the notice must also include the date on which the ground rent would have been payable according to the lease.

S.166 of 2002 Act

12.11 If the date on which the ground rent is payable by notice is after that on which it would have been payable according to the lease, because of the need to give at least 30 days notice, then any provisions in the lease relating to late or non-payment have effect from the date payable by notice.

12.12 Managers must give the name and address of the landlord on any written demand for service charges, ground rents or administration charges.

S.48 of 1987 Act

12.13 Managers must also give a name and address in England or Wales for the service of notices on the landlord.

12.14 Once a year upon request, managers should make available to any leaseholder a statement of service and other charges demanded of and paid by him.

Debt Recovery

12.15 Managers should have a procedure for how arrears of payments due from leaseholders will be collected which should be available to all leaseholders.

12.16 Any charges for late payment of service charges should be as set out in the leases or be reasonable.

12.17 Interest on late payments is only chargeable if allowed in the leases.

12.18 Managers should not threaten forfeiture as part of any debt collection unless the breach has been admitted or the debtor is advised at the same time that forfeiture cannot be granted without application to an LVT for permission to seek forfeiture.

12.19 Managers should not contact the mortgagor of a lessee without first of all informing the lessee in question that of this fact.

12.20 Where a leaseholder has died or has had to go into hospital or care and a dwelling remains unsold, the estate of the leaseholder remains responsible for all charges until the assignment of the lease by way of sale. Even if no services are being received by the estate of the leaseholder it is still necessary for the manager to collect the full service charges and ground rent. Without the payments of service charges by all the provision of services may be put at risk.

12.21 Managers should offer guidance on the range of state benefits available to help meet service charges and/or indicate where further advice on benefits and debt counselling can be obtained and provide the name and address of agencies concerned.

12.22 Managers should offer to meet with a leaseholder who owes charges to explore options for repayment before taking legal action. Managers should not take legal action without giving adequate written warning; such warning to include a suggestion that leaseholders seek advice on the consequences of non-payment. Consideration should also be given to resolving the matter through alternative dispute resolution rather than through the courts.

Limits on the Use of Forfeiture

12.23 Managers should seek to solve problems of non-payment of ground rent and service charges without recourse to forfeiture and only use forfeiture as a last resort, after other attempts to remedy the breach have failed.

12.24 Managers should notify any known mortgagee of any intention to take action to forfeit the lease.

S.167 of 2002 Act

12.25 Forfeiture is not available to recover small debts consisting of rent, service charges or administration charges (or combinations of them) where the amount does not exceed £350 unless all or any part of that debt has been outstanding for more than 3 years.

S.81 of 1996 Act & S.170 of 2002 Act

12.26 Unless the leaseholder has admitted that the charge is payable, a landlord must not exercise a right of re-entry or forfeiture regardless of what the lease might say for failure to pay a service charge or administration charge (or for any other breach of a condition of a lease), unless it has been finally determined by a LVT or court that a breach has occurred, and the amount of the charge is payable. A landlord may not serve a notice of forfeiture until after a period of 14 days beginning with the day after the final determination by a LVT or a court.

12.27 Where forfeiture action is taken or completed, the landlord should repay the value of the forfeited lease to the former leaseholder and others with a legal interest in the lease, subject to deduction of all costs and expenses incurred in taking forfeiture action and in the subsequent sale. These may include, but are not limited to, legal and management costs in taking forfeiture action had the lease not been forfeited up to the commencement of a new lease, costs of marketing and resale of the property, and other costs arising during the period of the lease or upon resale.

13.0 Fire Safety and Health and Safety Duties

13.1 Managers have a range of duties to ensure the fire safety and health and safety of the persons living in or visiting the schemes that they manage. Here is a summary of some of them; there are many more.

Fire safety

13.2 Managers must arrange for a fire risk assessment of common parts to be carried out by a competent person and for a review that assessment at appropriate intervals. (The Regulatory Reform (Fire Safety) Order 2005.) Copies of the fire risk assessment should be made available to leaseholders on request.

13.3 Managers must arrange for the maintenance and testing of fire alarm systems and equipment and emergency lighting where provided.

13.4 Guidance on fire safety in retirement housing is included in 'Fire safety in purpose-built blocks of flats' issued by The Local Government Group.

Health and Safety

13.5 Managers must arrange for a risk assessment of health and safety in common parts to be carried out by a competent person and for a review of that risk assessment at intervals assessed to be relevant to the particular circumstances. (Health and Safety at Work Act 1974.) Copies of the risk assessment should be made available to leaseholders on request.

13.6 Managers must arrange for regular thorough inspections and maintenance of lifts (Lifting Operation and Lifting Equipment Regulations 1998 - SI 1998/2307 and SAFed Guidelines on the supplementary tests of in-service lifts - SAFed 2006.)

13.7 Managers must arrange for fixed wiring and portable electrical equipment in common parts to be tested in accordance with best practice and the Electricity at Work Regulations 1989.

13.8 Managers must comply with the duty to manage asbestos in common parts as required by the Control of Asbestos at Work Regulations 2012.

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upplies Regulations
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13.9 Managers must comply with the requirements to monitor the quality of water supplies where the supply to properties or communal areas is other than direct from the water provider or where there are communal tanks. The Private Water Supplies Regulations 1991 and the Approved Code of Practice on the Control of Legionella Bacteria in Water Systems are relevant.

14.0 Discrimination and Equal Opportunities

Prohibition of Discrimination

Human Rights Act 1998 Sch.1 Article 14.

14.1 Managers must ensure that they follow the European Convention on Human Rights as incorporated into UK law. In particular article 14 prohibits discrimination. The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Equalities Act 2010

14.2 In the provision of services or the sale of properties managers must ensure that there is no discrimination within their organisation on the grounds of race, colour, nationality, religion, ethnic or national origin or sex, and should ensure that there is no discrimination on the grounds of marital status, age, sexual orientation or disability.

Equal Opportunities

14.3 Managers should have an equal opportunities policy statement, procedures and practices covering management, maintenance, sales and recruitment.

Abuse of Older Vulnerable Persons

14.4 Managers should have policy and procedures in place to prevent and deal with allegations of abuse of older people appropriate to the size of the organisation and other circumstances.

Racial Discrimination and Harassment

14.5 Managers should have anti-harassment policy and procedures in place to prevent and deal with harassment of residents and staff appropriate to the size of the organisation and other circumstances. The policy should support victims of discrimination or harassment.

14.6 Managers should communicate effectively with all leaseholders and make arrangements to translate material if needed.

Equalities Act 2010 Part 4

14.7 Managers and their staff must not discriminate or harass a person on racial grounds, or in the terms on which they offer to sell or let properties.

Anti-Social Behaviour

14.8 Managers should have policy and procedures in place to prevent and deal with anti-social behaviour appropriate to the size of the organisation and other circumstances.

Age Discrimination

S197 of the Equalities Act 2010 & The Equalities Act 2010 Commencement Order no. 9 SI 1569

14.9 Managers must not discriminate in the provision of services in relation to age unless it can be objectively justified or it is covered by the specified exceptions.

14.10 Managers should not discriminate on the grounds of age in the employment of staff and must not operate a default retirement age unless it can be objectively justified.

Disability Discrimination

Equalities Act 2010 Part 4

14.11 Managers must not discriminate against disabled people when letting or selling property.

qualities Act 2010 art 13 S.189/190

14.12 Managers have a duty to make reasonable adjustments to premises to assist disabled persons if requested. This duty is in three parts: adjustments to policies, procedures and practices; changes to terms of lettings; and the provision of auxiliary aids. The duty does not apply to physical alterations to common parts of schemes but see 14.16 and 14.17 below. Managers should follow the code of practice issued.

14.13 Where a lease entitles a leaseholder to make improvements or alterations with the landlord's consent, the landlord cannot unreasonably withhold consent if a leaseholder wants to make a disability related adaptation to their flat/house. (Part 13 Equalities Act 2010)

14.14 If a lease contains an absolute prohibition against alterations a leaseholder may request a change to the terms of letting.

14.15 Registered Providers are under a public sector equality duty. (Part11 Equalities Act 2010) and should follow the Disability Equality Duty for Housing Providers Code of Practice from the Equalities and Human Rights Commission.

Disability-related Alterations in Common Parts

14.16 Managers should consider in a reasonable manner requests for alterations to common parts which would assist disabled persons, particularly where the relevant leaseholder is willing to pay for the alteration, ongoing maintenance and reinstatement, if that is a requirement for consent.

14.17 Consultation with other lessees about any proposed alteration requested should be carried out.

14.18 If, after consultation, it is decided to proceed then the manager should draw up a draft contract between the manager and the relevant leaseholder which includes liability for payment of works, ongoing

maintenance costs and reinstatement, and any fees which the manager proposes to charge for dealing with the proposed alteration. That contract is then subject to agreement with the relevant leaseholder.

Data Protection

Data Protection Act 1998

14.19 Managers must adhere to the provisions of the Data Protection Act 1998.

14.20 Leaseholders have the legal right to see the information which managers hold about them. A leaseholder should make a written request for access and then the manager has 40 calendar days in which to respond. However the Data Protection Act 1998 does not prevent a manager from releasing personal information where they have a legal obligation to do so.

14.21 Managers must issue a fair processing notice to individuals before processing their information. Managers should notify leaseholders what information they require, will keep, disclose and for what purpose. This should be a statement at the point of collection of any information supplemented by a general statement.

15.0 Repairs and Maintenance

15.1 Managers must not attempt to recover the costs of improvements from service charges including reserve funds unless the lease specifically allows for this.

15.2 Managers should set out in writing the respective repairing obligations of landlord and leaseholder.

15.3 Managers should provide a service that is as cost effective as possible.

15.4 Managers should set out in writing as part of the Leaseholders' Handbook how leaseholders should report repairs, and should publish target time scales for the completion of repairs which are the landlord's responsibility under the terms of the lease.

15.5 Managers should arrange for maintenance work to be undertaken by either staff or approved contractors who provide a customer-orientated and competitively priced service.

15.6 Managers should have systems which will enable leaseholders to seek assistance in the event of an emergency arising out of normal working hours.

15.7 Where the repair works are necessary but not urgent managers should seek to group them in the interests of economy.

Cyclical and Planned Maintenance

15.8 Managers should draw up and implement an adequate and cost effective programme of planned or cyclical maintenance for communal parts of the scheme together with all plant and services that require regular maintenance (including the maintenance and replacement when necessary of communal furniture and fittings). Managers should make a realistic assessment of the cost of that programme and include an appropriate item in the proposed annual budget for consultation with residents.

Major Repairs and Reserve or Long Term Maintenance Funds

15.9 Managers should arrange all necessary major repairs and renewals to the buildings to ensure that the scheme is kept up to a reasonable standard of repair and decoration.

15.10 Managers should maintain reserve funds to defray the cost of major repairs and renewals whenever the lease allows.

15.11 If a lease says a reserve fund "shall" or "will'' be collected, then managers must do so.

9 of 1985 Act as ended by Sch. 14 to)2 Act

15.12 Any contributions to a fund must pass the test of reasonableness.

15.13 Contributions to funds should be calculated by the life-cycle costing method for specific building elements and refurbishment of communal areas, and should be based on the condition of and be specific to each scheme. A minimum life cycle of 10 years should be used. Life-cycle costing is the estimating of the life of each component of the building or scheme and its replacement cost. A schedule is put together of the components for the scheme which will demonstrate how much will be required to save for replacement of components as they fall for replacement.

15.14 The replacement cost of building elements should include V.A.T and the cost of any professional or other fees that may be incurred in carrying out works to those elements in the future.

15.15 Managers should consider from time to time whether a review of the calculation of the adequacy of funds is appropriate and inform leaseholders at the annual meeting.

15.16 If a manager intends to introduce a new method of calculation of contributions to funds, then the manager should advise all leaseholders and explain why a change is to be made.

15.17 Managers should make available on request to any leaseholder a copy of the method used to calculate reserve fund contributions. Managers should provide a copy of this schedule and the resulting long term maintenance plan to leaseholders if requested.

15.18 Managers should only transfer service charge funds to reserve funds in accordance with the provisions made in the annual budget for the service charge.

16.0 Administration Charges and Consents

Administration Charges

16.1 Administration charges are charges payable by leaseholders directly or indirectly for or in connection with the application or grant of approvals under a lease, for provision of information or documents, for recovery of outstanding amounts under the lease from a leaseholder's failure to make a payment, or in connection with a breach or alleged breach of a covenant in a lease.

.158 of & Sch .11 to 002 Act

16.2 An administration charge is payable by a leaseholder only to the extent that the charge is reasonable. A leaseholder or a landlord may apply to a LVT for an order to vary the lease on the grounds that an administration charge specified in the lease or any formula for calculation of the administration charge in the lease is unreasonable.

.158 of & Sch. 1 to 2002 Act

16.3 A leaseholder or landlord may also apply to a LVT for a determination whether an administration charge is payable and if so, to whom payable, by whom payable, the amount payable, the date at or by which it is payable, and the manner in which it is payable. An application can be made whether the relevant administration charge has already been paid or not.

.158 of & Sch. 11 2002 Act

16.4 A summary of the rights and obligations of the leaseholder in relation to administration charges must accompany a demand for an administration charge.

Applications for Permissions and Consents

S.19 of L&T Act 1927

16.5 Managers must reply to applications for permissions or consents arising out of leases in a reasonable time and where the application is refused give reasons. Managers should specify the number of working days in which the managers will reply to requests. Legislation specifies that in certain circumstances consent cannot be unreasonably withheld (E.g. consent to assign the lease). See also paras. 14.12 & 14.13 for special conditions regarding applications for permissions and consents from disabled persons.

16.6 Any leaseholder making a formal request for permissions or consent relating to adaptations in common parts should not be required to pay an administration fee for that permission or consent.

17.0 Resales

17.1 Managers who offer a resales service must comply with the Estate Agents Act 1979 and the. Consumer Protection from Unfair Trading Regulations 2008.

17.2 Managers may offer a resales service to leaseholders but this should only be one option and not be a requirement on the leaseholder or his/her estate, except where the property has been built with the aid of public funding intended to reduce the price to purchasers. In that case, the new purchasers may be limited to those meeting the criteria required as a condition of public funding.

17.3 Leaseholders should also have the option of finding their own buyer and/or appointing an estate agent of their choice (subject to any rights of the landlord to approve a purchaser according to the criteria set out in the lease), except where the property has been built with the aid of public funding intended to reduce the price to purchasers. In that case, the new purchasers may be limited to those meeting the criteria required as a condition of public funding.

17.4 Managers should not make any charge or require any payment on resale except where it is stated or implied in the lease or where a service has been offered and accepted at an agreed fee. Any charge should be reasonable.

quality Act 2010

17.5 It is unlawful for anyone selling or managing property to racially discriminate in any of the following ways:

- In the terms on which a property is offered for sale
- By refusing to let a person buy
- By treating a person differently than others who want to buy
- By refusing to transfer a lease

17.6 Managers should have regard to the Code of Practice on Racial Equality in Housing England.

Equality Act 2010 part 4

17.7 The Equality Act 2010 makes it unlawful for those involved with selling and letting property to discriminate against disabled people.

.330 of Proceeds of rime Act 2002

17.8 Managers have a duty to report to the Serious Organised Crime Agency if they know or have reasonable cause to suspect that anyone connected to their business is or has been involved with money laundering. Managers are obliged to report without the knowledge or consent of the person suspected.

17.9 Some leases on retirement schemes are non-assignable and the leases require the lessee to surrender or sell the lease back to the landlord in return for a premium. In the case of these leases it will be the landlord who will be the seller of a new lease and the requirements in 17.2 and 17.3 above do not apply.

18.0 Transfer Fees

18.1 Transfer fees, also sometimes known as exit fees, are payable on the resale of some retirement leases; sometimes as a percentage of the price when bought, sometimes as a percentage of the selling price. Transfer fees are payable by leaseholders to landlords of their schemes who may or may not be the manager, even though it is often the manager who will collect the fees on behalf of the landlord.

18.2 Transfer fees are different from the fees charged on some retirement leases as a percentage of the selling price which are collected and paid into the reserve fund of a scheme. These are often called contingency fees.

18.3 Transfer fees charged should be clearly set out in the relevant leases and be transparent. Managers should include information on whether transfer fees are chargeable in the leaseholders' handbook.

18.4 Managers should be aware of the views of the Office of Fair Trading on transfer fees.

19.0 Handovers between Managers

19.1 Handovers should be handled in a timely and cooperative manner between managers.

Handover of Documents where the Manager is Agent

19.2 All documents produced by a managing agent or received from third parties including leaseholders during its appointment belong to the landlord; they should be handed over without the need for a request by the landlord before or at the latest at the date of handover, unless the landlord instructs otherwise. The manager's business administration records, bills and notes belong to the manager.
The correct test to be applied is whether the new manager would need the document to carry on the management effectively at the date of handover. If so the document or a copy should be handed over.

Handover of Documents where the Manager is also the Landlord

19.3 The manager should not seek to frustrate the handover or make things difficult for the new manager. The new manager will need information before handover to be able to commence management effectively on the date of handover. The outgoing manager should cooperate such that the new manager can commence effectively at the date of handover.

Handover of Service Charge Funds

S94 2002 Act

19.4 At the date of handover the outgoing manager must handover all accrued uncommitted service charge monies except for a sum required to meet anticipated committed expenditure before that date.

19.5 Any balance remaining that becomes due to the new manager should be paid when the final account has been agreed.

Preparation of Final Account

19.6 The outgoing manager should produce a final statement of account for service charges as at the date of handover no later than three months from the date of handover. The statement should include income and expenditure, balance sheet, creditor and debtor lists, bank statements and all supporting receipts and invoices for expenditure incurred in the financial year to the date of handover.

TUPE

Transfer of Undertakings Protection of Employment Regulations 2006

19.7 Managers and RTM Companies must comply with the TUPE regulations (Transfer of Undertakings Protection of Employment Regulations). Managers should be particularly sensitive to the needs of scheme managers and other employees at the scheme when a transfer

of management is proposed. Professional advice should be taken about the employment rights of staff.

Right to Manage and Handovers

19.8 Right to manage handovers require managers to comply with statutory requirements in the 2002 Act. Managers must :

- comply with requests for information made by an RTMCo under S82
- comply with requests for rights of access made by an RTMCo under S83
- comply with the requirement to serve contractor and contract notices under S93.

20.0 New Developments

20.1 Managers should not place unnecessary restrictions on the assignment of leases such that they would retain the right to charge fees for resales even if the management of the scheme had passed to another party.

20.2 Managers should not seek to place restrictions on the party that can place insurance of the premises in leases such that the right to place insurance would not pass to another party.

20.3 Managers should not be named as the management party in a three party lease or place unreasonable conditions in leases to deter the right to manage.

20.4 Managers should not sign management agreements with developers of new schemes prior to the sale of any dwellings in that scheme for a period of longer than 3 years.

20.5 Managers should not seek a rental income from a scheme manager's dwelling in a lease of a new scheme.

20.6 Managers should seek that all leases of new schemes include a requirement for the developer/landlord to pay equivalent service charges for unsold dwellings.

Defects

20.7 Managers should ensure that staff are aware of the terms of the defects and structural warranty offered to leaseholders in respect of new dwellings.

20.8 Whilst the warranty on a new dwelling is a contractual matter between the purchaser leaseholder and the developer, managers should be prepared both to offer advice to leaseholders on the terms of that warranty and the steps they should pursue if they wish to make a claim, and also to initiate claims under any common parts warranty.

20.9 Managers should use best endeavours to have defects to common parts of new schemes covered by warranty carried out by the developer or through the warranty scheme.

20.10 Managers should be aware that the Sale of Goods Act 1979 may apply in relation to defects of items of equipment.

21.0 Scheme Managers and Other Staff

Appointment

21.1 Managers should make enquiries into the employment history, relevant personal qualities and background of anyone they are intending to appoint as a scheme manager to satisfy themselves as far as possible that any prospective scheme manager is honest and trustworthy and a suitable person to supervise retirement housing.

21.2 Managers must not knowingly employ a barred individual in relation to regulated activities.

21.3 Managers should require a criminal records disclosure from employees working with older people. If managers consider that a role is within the definition of regulated activity, then if they ask the individual to apply for an enhanced criminal records disclosure check they must request the appropriate barred list check for children, adults or both.

Scheme Managers' Duties

21.4 Managers should issue scheme managers with a job description that clearly defines their duties and responsibilities. Managers should also make clear what scheme managers can and cannot do for residents to protect them from unreasonable demands.

21.5 Residents should be informed of the scheme manager's terms of employment, duties and responsibilities and should be given a copy of the scheme manager's job description and hours of duty on request.

21.6 Managers should issue each scheme manager with a manual which sets out all duties, responsibilities and operating procedures. Issues which should always be included are policies on dealing with emergencies and master keys, on the use of communal facilities, on dealing with petty cash and other monies, on authority over on-site contractors, on health and safety and on administering medicines/drugs.

21.7 Managers should ensure that all scheme managers keep a daily diary recording all significant events on site and dealings with residents (such as, emergencies, injuries, disputes and maintenance works) and keep it in a safe place for not less than 6 years. Diaries can be of great help in recalling important facts and actions should these ever be called into question at a later date.

21.8 Managers should allow individual residents on request to know what is recorded about them (not other residents) in the scheme manager's diary, by providing a copy or extract.

21.9 Managers should make clear to scheme managers and residents where responsibility lies for repairs to the scheme manager's dwelling and fixtures and fittings therein. In most cases, the lease will provide for the cost of such repairs to be charged to leaseholders through the service charge account.

Supervision

21.10 Managers should provide supervision and back-up support for scheme managers, as the nature of their job means that scheme managers can feel isolated. A specific person should be available to them to provide help and advice and to ensure they feel part of the management team. That person should visit the scheme manager on site at least every eight weeks (on average) and should be able to be contacted by telephone at other times.

21.11 The specific person should ensure that the scheme manager is following the organisation's proper practices and procedures and is observing the correct hours of duty. The specific person should also deal as promptly as possible with any difficulties the scheme manager cannot resolve or with any problems in the relations between scheme manager and residents.

21.12 Managers should arrange for the relationship between the scheme manager and the specific person to be monitored.

21.13 Managers should have policy and procedures to deal with aggressive behaviour towards and harassment of scheme managers by residents or others. These policies and procedures should be notified to scheme managers. See also paragraphs 14.4 and 14.5 of this Code.

Training

21.14 Managers should provide a training programme for each scheme manager based on the experience and qualifications of that scheme manager.

21.15 Scheme managers should be offered an induction course shortly after starting work with the organisation; thorough on-site training in procedures and policies; regular skills training and updating on new procedures and organisational changes.

21.16 Managers should ensure that staff responsible for supervising scheme managers are given full and proper job training. It is also recommended that senior managers review the performance of those staff at regular intervals and identify any individual training needs.

Code of Conduct for Scheme Managers

21.17 Managers should provide scheme managers with a copy of the Code of Conduct for scheme managers of private retirement housing issued by the Association of Retirement Housing Managers and give training to ensure understanding of its principles. (See Appendix 2) The Code should be available for inspection by residents on request.

Scheme Manager's Accommodation

21.18 Managers should ensure that any rent payable and retainable by them for accommodation provided to staff employed to provide services is reasonable having regard to the age, geographical location, condition, size and purpose for which the accommodation is used, unless the rental sum is fixed or determined otherwise by the terms of the lease. Where the rent is set by a third party and is being collected by the manager acting as an agent, this requirement will not apply.

22.0 Provision of Services

22.1 Managers must meet the obligations set down in individual leases to provide or arrange services. If managers do more than the lease requires you may not be able to recover the costs.

22.2 Managers should ensure that services are provided or arranged in an efficient and cost-effective way and in a manner which provides value for money for leaseholders

22.3 Managers should monitor the quality and efficiency of services provided and publish target time scales for the delivery of services, where appropriate, taking into account the views of leaseholders. Managers should take reasonable action to improve services based upon feedback from such monitoring.

22.4 Managers should consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of leaseholders.

22.5 Managers must use their best endeavours to ensure that any scheme's emergency call system is kept fully operational and that arrangements are made to monitor and respond to emergency calls from residents.

22.6 Managers must ensure that all master keys are accounted for, are kept in a safe and secure place and are only used by authorised personnel in appropriate circumstances.

22.7 Managers should take appropriate steps to control access into buildings on schemes so as to establish, as far as possible, a secure environment for residents while ensuring access for emergency services.

22.8 Managers must arrange for furniture, fittings, equipment and carpeting in any common room, laundry, guestroom or other communal room or area to be maintained and renewed when necessary.

22.9 Managers must arrange for the gardens and grounds to be maintained to a standard consistent with the quality of the development and use reasonable endeavours for paths, driveways and car parks to be kept in a safe condition. Managers must ensure that gutters, downpipes and gullies are kept clear.

22.10 Where heating equipment is provided in common parts managers must arrange for it to be maintained and for it to be set to provide a temperature that meets the wishes of a majority of residents.

23.0 Care and Support Services

23.1 There is a range of different types of retirement housing schemes and some of them may provide care and support services. Terms used are extra care, very sheltered and housing with care.

Care Services

23.2 Managers who are responsible for domiciliary care services, extra care housing and some supported living services should ascertain whether they are required to register with the Care Quality Commission.

23.3 Managers of retirement schemes that are required to be registered with the Care Quality Commission must have regard to the essential standards of quality and safety issued by the Commission.

23.4 Managers must carry out criminal record checks on those working with vulnerable people or in healthcare.

23.5 Managers are under a legal duty to notify the Disclosure and Barring Service of relevant information, so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups. If a manager dismisses or removes a member of staff/volunteer from working with vulnerable adults (in what is legally defined as regulated activity) because they have harmed a vulnerable adult a manager have a legal duty to inform the Disclosure and Barring Service. An organisation which knowingly employs someone who is barred is breaking the law.

Care Services Charges and Service Charges

23.6 Managers should distinguish clearly between charges for care services and service charges as defined by the Landlord and Tenant Act 1985 S18.

Housing- related Support Payments

23.6 A minority of leaseholders have been paid housing-related support payments, formerly known as supporting people payments, which were merged into the core budgets of local authorities. These payments are discretionary and most local authorities do not make payments to leaseholders of retirement schemes unless there is an element of additional support or care.

23.7 Managers should offer reasonable assistance to leaseholders who require additional information to confirm their eligibility for such payments.

24.0 Some Exceptions to This Code

24.1 There is a range of different retirement schemes. This Code is addressed to schemes sold on long leases and so the requirements of this Code will not fully apply on certain retirement schemes.

Freeholders of Bungalows and Houses

24.2. Some private retirement housing schemes contain wholly or partly bungalows and houses which are sold as freeholds, not long leases. This Code is written for leasehold retirement housing and so cannot address in full the position of these freeholders.

24.3. In general freeholders will pay a charge for services as any leaseholder but that charge is called in law a rent charge, not a service charge. The consequence is that freeholders do not have any legal rights given to long leaseholders as set out in Appendix 1 of this Code. In particular they cannot challenge the reasonableness of the charge before a Leasehold Valuation Tribunal.

24.4. Managers of freeholders on retirement housing schemes should as far as possible treat freeholders and leaseholders equally, but that is not always possible given the different legal requirements and constraints.

24.5. Freeholders may be given additional protection in the contracts of sale of their homes, known as deeds of transfer. Managers must comply with the terms of these contracts.

Shared Ownership and Shared Equity

24.6. Some leaseholders on private retirement schemes have bought under different purchase schemes which are usually referred to as shared ownership.

24.7. There are two main schemes in use. Shared ownership means that the leaseholder buys a percentage share of the value of the home and then pays a rent based on the remaining share. The lease allows for the leaseholder to buy out the whole or part of the remainder of the equity at a later date if he/she wishes to do so. Shared equity is where the leaseholder buys a fixed percentage of the value of the home-say 70%- but can never buy the remainder. So at resale the leaseholder only receives the same share in the equity back again. The remaining equity always remains in the hands of the freeholder.

24.8 This Code has been written primarily for leaseholders who own 100% of the equity of their homes. The legal position of shared owners is not the same for all matters in this Code. Managers should always try to treat shared owners equally to any other leaseholders but sometimes the legal position will be different. For example shared owners may not be able to exercise the right to manage or enfranchise. But shared owners

can challenge service charges at an LVT and have legal rights relating to consultation and insurance.

Extra Care Schemes with Financial Assistance from Statutory Agencies

24.9 Some extra care schemes receive grant-aid for capital development. Where this is the case then the requirements in this Code to hold service charges in separate bank accounts and the guidance on resales in chapter 17 do not apply.

Mixed Schemes of Rented and For Sale Homes

24.10 Some retirement schemes have a mixture of homes for sale on long leases and to rent on shorter tenancies. It is often thought that service charges for the two types of home should be the exactly same; this is never the case. Different costs are involved with some elements of the service charge costs payable by leaseholders being a cost against the rent of the rented homes.

24.11If the rented homes pay service charges that are defined as variable according to the 1985 Act, then the same rights that apply to leaseholders regarding service charges, information about insurance and consultation apply to the tenants of rented homes.

24.12 If the rented homes pay service charges that are defined as fixed, then the rights that apply to leaseholders regarding service charges and consultation do not apply to the tenants of rented homes.

24.14 Tenants of rented homes paying service charges do not have any legal rights regarding the right to manage, right to buy the freehold or the appointment of a manager.

24.15 Managers should seek to treat the tenants and leaseholders on such mixed schemes as equally as possible subject to the differing legal requirements.

Appendix 1 Legal Rights of Leaseholders

Leaseholders' Rights Regarding Service Charges

1.1 Demands for service charges must contain the name and address of the landlord and if that is not in England and Wales a further address in England and Wales where notices may be served on the landlord.

1.2 Demands for service charges must be accompanied by a summary of rights and obligations. A leaseholder may withhold payment of a service charge that has been demanded without the summary and any provision relating to non-payment or late payment of service charge in a lease does not have effect in relation to the period in which the service charge is withheld.

1.3 Managers must ensure that service charges are reasonable. A leaseholder (or a landlord) may ask a LVT to make a determination about whether a service charge is payable, including whether costs incurred for services, repairs, maintenance, improvements, insurance or management have been reasonably incurred or whether services or works are of a reasonable standard.

.19 & S.27A of 985 Act as mended by Sch 14 2002 Act

1.4 The LVT also has the power to determine (on the application of the landlord or leaseholder) whether, if costs were to be incurred for services, repairs, maintenance, improvements, insurance or management, they would be reasonable, or whether services or works proposed would be of a reasonable standard, or what amount payable in advance is reasonable before costs are incurred.

1.5 In determining a matter LVT's can decide whether a service charge is payable (or would be payable if costs were incurred), and, if it is, as to the person by whom it is payable; the person to whom it is payable; the amount which is payable; the date at which or by which it is payable; and the manner in which it is payable.

1.6 Leaseholders may make an application to a LVT to challenge a service charge whether payment of that charge has already occurred or not. However an application may not be made where the matter in dispute has already been admitted or agreed by the leaseholder, or has been or is to be referred to arbitration using a post-dispute arbitration agreement, or has been determined by a court or by an arbitral tribunal following a post-dispute arbitration agreement. But the leaseholder is not taken to have agreed or admitted any matter in dispute because a payment of the service charge has already been made.

Rights to Information about Insurance

2.1 Managers must, on request in writing, provide a summary of the insurance cover, and afford reasonable facilities for inspecting the policy document and evidence of payment of premiums, and for taking copies or extracts from them. Alternatively managers must, on request in writing, take copies for the leaseholder and either send them, or arrange for them to be collected, as the leaseholder prefers. Managers must comply with the leaseholder's request within 21 days beginning with the day on which the request in writing is received.

2.2 Managers must not make a charge for making facilities available for inspection in paragraph above, but may treat the costs of such inspections as part of their management fee.

2.3 Managers may make a reasonable charge for doing anything else, apart from the inspection, in complying with a request for copies of insurance documents in paragraph 2.1 above. Managers should advise the leaseholder in advance of any charges.

2.4 If insurance is effected by a superior landlord, managers must pass any request on to the superior landlord by giving a notice in writing requiring the superior landlord to give you the relevant information.

2.5 Failure to comply with the requirements set out in paragraphs above is a criminal offence.

2.6 The assignment of a lease or tenancy does not affect the validity of a request under paragraphs above.

2.7 Leaseholders have the right to notify the insurer of any damage caused to their dwelling or any part of the building containing their flat where the insurance policy provides that claims must be notified within a specified period.

2.8 Where a leaseholder is required to insure the dwelling with an insurer nominated or approved by the landlord, he may apply to the LVT for an order requiring the landlord to nominate another insurer. The LVT may issue such an order where the insurance available from the insurer nominated by the landlord is determined to be unsatisfactory in any respect or where the premium payable is excessive.

2.9 Where the leaseholder of a house is required to insure the house with an insurer nominated or approved by the landlord, the leaseholder has the right not to insure with the landlord's choice if he fulfils certain conditions. Namely the house is insured with an authorised insurer under a policy that covers both the landlord and the leaseholder for all risks required by the lease and for an amount not less than the lease requires to be covered. The leaseholder must also have given the landlord notice in the prescribed form before the end of 14 days on which the policy took effect if not renewed, or if it has been renewed

14 days from when which it was last renewed. The prescribed contents and form for the notice to be served on the landlord can be found in the Leasehold Houses (Notice of Insurance Cover) (England) Regulations 2004. SI 2004 No. 3097.

Right to a Summary of Relevant Costs

3.1 Managers must provide for a leaseholder or the secretary of a recognised tenants' association, on request, a summary of relevant costs (as defined by S.18 of the 1985 Act) incurred during the last accounting year, or where accounts are not kept on that basis, the 12 months before the request.

3.2 The summary must cover all costs incurred by the landlord for which the service charge is payable and should show how they are reflected or will be reflected in demands for service charges. The cost of preparation of the summary is regarded as properly chargeable to the service charge account where the lease so allows.

3.3 The summary must distinguish between items:

For which no payment has been demanded of the landlord within the period to which the summary relates;
For which payment has been demanded of the landlord but not paid within that period; and
For which the landlord has paid within that period.

3.4 The summary must also specify the total of any money standing to the credit of the leaseholders paying these charges at the end of the period and any costs which relate to works for which improvement grants have been or will be paid and show how they have been reflected in the service charge demands.

3.5 If requested, managers must supply the summary within one month of the leaseholder's request or within 6 months of the end of the period covered by the summary, whichever is the later.

3.6 If the building has more than four dwellings, the summary must be certified by a qualified accountant as a fair summary sufficiently supported by accounts, receipts and other documents. A qualified accountant must belong to one of the recognised accountancy bodies and may not be an officer or employee of the landlord or managing agent or, if the landlord is a company, of any associated company.

Right of First Refusal of a Sale of the Freehold

4.1 Managers who are landlords and who are not Registered Providers must, if they wish to dispose of the freehold or any other interest in the scheme, give their 'qualifying' leaseholders first refusal on the purchase. In general qualifying leaseholders are those holding long leases for a term over 21 years

The Right to Buy the Freehold

art 1 of the 1993 ct

5.1 Leaseholders of flats have the right to buy the freehold of their building if they and their building qualify. They have this right even if the landlord does not wish to sell and after buying the freehold can decide for themselves how to manage the building.

5.2 To qualify leaseholders must have leases that were first granted for more than 21 years. Shared ownership leases do not qualify unless the leaseholders now own 100% of the equity.

5.3 For the building to qualify at least two thirds of the flats in it must be owned by leaseholders that qualify (see paragraph 5.2 above) and no more than 25% of the building must be in non-residential use.

5.4 The process to be followed is not explained in detail here. In essence however, the leaseholders will make an offer of a price to buy the freehold to the landlord and seek to agree the price and other terms. If terms cannot be agreed then either the leaseholders or the landlord may refer the dispute to a LVT, which will decide the terms and price for the freehold according to a formula set out in statute.

The Right to Seek the Appointment of a Manager

6.1 Leaseholders have the right to apply to the LVT for the appointment of a manager if unhappy with their current one. This right does not apply if the landlord is a Registered Provider. When deciding whether to appoint a manager the LVT will decide whether it is satisfied that:

1) The landlord or manager is in breach of his obligations to a leaseholder under the lease which relates to the management of the premises or part of the premises; or
2) Unreasonable service charges have been made or are proposed or likely to be made; or
3) The landlord or manager is in breach of any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the 1993 Act (such as this one by the ARHM); or
4) The landlord or manager has failed to comply with S.42 and S.42A of the 1987 Act with regard to holding service charge monies in trust; and
5) Other circumstances exist in which it is just and convenient for the order to be made.

6.2 Leaseholders need only prove one of the above grounds. However, if they intend to prove grounds 1, 2, 3, or 4 they must also satisfy ground 5 to the LVT that it is just and convenient in the circumstances to make an order to appoint a new manager.

The Right to Manage (RTM)

7.1 Leaseholders of flats have the right to take over the management functions of their landlord, as a group, if they and their building qualify. This right to manage is different to the right to seek the appointment of a manager, because it can be used by leaseholders even if their landlord or current manager is not at fault.

7.2 To qualify leaseholders must have leases that were first granted for more than 21 years. Shared ownership leases do not qualify unless the leaseholders now own 100% of the equity.

7.3 For the building to qualify at least two thirds of the flats in it must be owned by leaseholders that qualify (see paragraph 17.7 above) and, no more than 25% of the building must be in non-residential use. Buildings owned by a local housing authority do not qualify, nor do buildings where there are different freeholders of parts of the building, or where there is a resident landlord in a building with no more than 4 units. It also does not apply where the right has already been exercised and a RTM Company is already in place, or where the right has been exercised but the RTM Company has ceased to be responsible for the management within the previous 4 years.

7.4 To exercise the right to manage leaseholders must form a RTM Company. It is the RTM Company that will take over the management functions.

7.5 All qualifying leaseholders have the right to become members of the RTM Company and must be invited to do so by the RTM Company. For the right to manage to proceed the RTM Company must have as members qualifying tenants equal to 50% or more of the total number of flats in the building. The landlord also has the right to become a member of the RTM Company once the right has been exercised.

7.6 The RTM Company takes over the management functions by serving a claim notice on the landlord, containing detailed information prescribed by statute. The landlord then has one month in which to accept the claim or issue a counter notice. The landlord may only deny the claim to the right to manage if it can be shown the leaseholders or the building or the RTM Company itself do not qualify or if statutory procedures have not been followed.

7.7 The right to manage is not meant to be an adversarial process. If the claim is accepted the landlord must hand over to the RTM Company all management functions according to the prescribed procedure. If the claim is disputed and a counter notice has been served by the landlord, the RTM Company can refer the matter to a LVT to decide if the claim to the right to manage is correct.

7.8 The RTM Company does not have to pay the landlord any compensation for loss of management if it successfully claims the right to manage. However it will have to pay the landlord's reasonable costs arising from the claim. Disputes about the reasonableness of a landlord's costs may be referred to a

LVT. If a manager or landlord is served with a claim notice it may be advisable to consider seeking independent legal advice.

Right to Inspect Supporting Documents to Accounts

8.1 If requested by a leaseholder or the secretary of a recognised tenants' association within six months of their receiving a summary of costs (see above), managers must provide an opportunity for the inspection of the accounts, receipts and other supporting documents. You must not charge the leaseholder for the inspection and the leaseholder has a right to take copies or extracts from any documents. The cost of the inspection can be included in the cost of management.

8.2 Any charge made for providing copies of any documents or having a member of your staff in attendance for that purpose must be reasonable. Managers should inform leaseholders of any charges for this service in advance.

8.3 Managers must respond to the leaseholder's request in writing within one month and must then allow the leaseholder an opportunity to inspect the accounts, receipts and other supporting documents during the next 2 months.

8.4 Intermediate landlords who do not possess all the relevant information or documents necessary to comply with the requirements must make a written request to their landlord for this information.

8.5 It is a criminal offence to refuse or ignore a request for a summary of costs or for facilities to inspect documents under S.21 and S.22 of the 1985 Act.

The Right to Management Audit

9.1 Two thirds or more leaseholders of a scheme that consist of or include 3 or more dwellings have the legal right to have a management audit carried out by a suitably qualified person. Where the relevant premises consist of only two dwellings, either or both of the leaseholders have the right to have such an audit.

9.2 This legal right includes the right to have a qualified accountant or qualified surveyor appointed by leaseholders check the accounts and supporting documentation provided by the manager. However, it also goes further and allows an audit of whether management functions are being discharged in an efficient and effective manner.

9.3 The manager should allow the auditor to inspect the accounts, receipts or other relevant documents, and take copies of them; or the manager shall take copies and either send them to the auditor or leave them for collection, whichever the auditor prefers.

9.4 The purpose of the right is to help leaseholders who are dissatisfied with the manager to have professional help to make a fuller assessment of the manager.

9.5 Leaseholders exercise their legal right to have a management audit carried out on their behalf by having their auditor give a notice signed by each leaseholder (on whose behalf it is given) to their landlord. The notice should specify any documents required to be inspected or copied and any communal parts to be inspected, as well as give the full name of each of the leaseholders and the address of the property.

9.6 The landlord may include his costs of providing for the inspection of documents in respect of a management audit as part of cost of management. For any other costs the manager may make a reasonable charge.

The Right to Appoint a Surveyor

10.1 In addition to the right to a management audit referred to above, a recognised tenants' association has the legal right to appoint a qualified surveyor to advise on any service charge issue. The surveyor is given legal rights of access to the landlord's documents and common parts of the premises.

Rights to Information about Your Landlord

11.1 Any leaseholder at any time can make a request for disclosure of the identity of the immediate landlord. The request must be in writing and there is no prescribed wording. The request can be made to a manager, any managing agent or other person who received rent paid by the lessee.
If the request is served on the manager or managing agent a reply must be sent within 21 days from the date of receipt.

11.2 If a leaseholder has made a request under S1 above then the leaseholder can follow it with a request for the disclosure of the name and address of every director and the company secretary of the landlord. There is no prescribed wording for the request but it must be in writing.

11.3 If the landlord's interest in a block is assigned (sold to another party), then the new landlord must give notice in writing to every leaseholder of the name and address of the new landlord not later than the date within two months of the assignment. There is no prescribed wording but the notice must be in writing.

Administration Charges

12.1 Leaseholders have the right to challenge the reasonableness of

administration charges at an LVT.

Other Sources of Advice for Leaseholders about Their Rights

Excellent free advice and more detailed leaflets on leaseholder's legal rights can be obtained from the following:

Age UK: Tel. 08001696565
www.ageuk.org.uk/home-and-care/housing-advice-service/

LEASE; You can contact LEASE using this **online enquiry form**
or you can speak by calling **020 7383 9800** Lines are open Monday to Friday from 9am to 5pm.

http://www.lease-advice.org/

Appendix 2

Code of Conduct for Scheme Managers

This Code of Conduct for Managers and Scheme Managers sets out established principles of the way that managers should perform their roles. The ARHM wishes to thank the Centre for Housing and Support for its assistance in publishing these principles. Managers should be able:

1. To offer equal opportunities and fair treatment to all residents without discrimination on account of race, gender reassignment, disability, religion and belief, age, marriage and civil partnerships, sex and sexual orientation.

2. To recognise, respect and safeguard the individuality and personal rights of each resident whilst acknowledging the responsibility to others, and to encourage residents to accept their responsibility towards each other.

3. To understand and respect the confidentiality of knowledge and information relating to individual residents and the employer.

4. To facilitate independence and the well being of residents both as individuals and within the group as a whole.

5. To be sensitive and impartial in the delivery of services.

6. To act always with honesty and integrity.

7. To ensure that professional responsibility is never sacrificed for personal interest.

8. To establish and maintain high standards of personal conduct and professional relationships.

9. To acknowledge the need for continuing professional training and self-development.

10. To ensure that internal procedures relating to statutory obligations of the employer are understood and implemented.

11. To understand the role of other service providers and significant people in the lives of residents and be committed to working effectively with them.

12. To be aware of and to accept a responsibility to contribute to the setting of objectives, policies and procedures of the employer.

APPENDIX 3

Objects of the Association of Retirement Housing Managers

The ARHM represents management organisations who together manage over 95,000 private sheltered housing flats, houses and bungalows in England, Scotland and Wales. The Association is committed to high standards and ethics in the management of private sheltered housing.

Objects

The main objects of the ARHM are to:

- Promote high standards of practice and ethics in the management of retirement housing and in the provision of services to residents.
- Set standards for membership of the Association and promote quality and professionalism through training and education of members.
- Monitor standards of members including implementing a compliance-testing regime so that further improvements in standards can be made.
- Consider and comment on matters affecting the Association and retirement housing, and to promote the views of the Association in the business, social, educational and political communities.
- Investigate and determine complaints against members.
- Provide the principal forum for the discussion and progression of issues facing retirement housing.
- Promote the benefits of retirement housing.
- Provide and disseminate information on retirement housing and to act as a source of professionally based knowledge.
- Foster the exchange of ideas and information between members and organisations.

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