

5/11/2013

Dear Secretary of State,

CC Housing Minister Kris Hopkins

We write to you concerning one of the issues that arose during a round-table meeting on the leasehold sector at DCLG offices earlier this year, hosted by the then Housing Minister Mark Prisk and Baroness Hanham. The issue is to achieve better recognition of leasehold tenants' associations, "Recognised Tenants' Associations (RTAs)" as defined under Section 29 of the Landlord and Tenant Act 1985.

The organisations and MPs listed below have come together to propose a revision of the current guidelines on RTAs since they place unwanted bureaucratic burdens on leaseholders, landlords and agents during the formation of such groups and thereafter.

There is agreement amongst the signatories below that rather than increase your Department's workload, we could assist you with the wording of the revised guidelines.

The proposed draft guidelines, which we attach below, have the support of a broad range of stakeholders and have also been scrutinised by independent Counsel.

The proposed guidelines will simplify the process for leaseholders to form their own RTA. They will also prevent competing and conflicting tenants' associations being set up, as well as assist landlords and agents by reducing any undue administrative work.

The proposed guidelines have also been reviewed by a number of managing agents and existing RTAs to ensure they are workable and applicable legally within the public, private, large, small, residential and retirement elements of the leasehold sector.

We hereby request that you kindly review the proposed guidelines whilst considering instructing your Department to implement them as soon as practicable.

The MPs acting as signatories to this proposal have asked if you could please include them directly in any reply.

Yours sincerely,

Martin Boyd LKP/CARLEX

Ian Fletcher Policy Director British Property Federation

Steve O'Connell AM Deputy Chair,
London Assembly Planning Committee

Caroline Abrahams
Age UK Charity Director

Chris Paterson Senior Researcher
Centre Forum

Mark McLaren Which? Parliamentary
and Legal Affairs Manager

Ian Wingfield Deputy Leader of Southwark
Council & Cabinet Member for Housing

Sir Peter Bottomley MP

Edward Davey MP

Jim Fitzpatrick MP

Baroness Gardner of Parkes

Proposals for change in the guidelines on recognition of leasehold tenants' associations (RTAs)

Interpretation

“the 1985 Act” means the Landlord and Tenant Act 1985

“Associated company” means, in connection with the company in question:

- a) The or a holding company of that company;
- b) A subsidiary of that company in question, and/or
- c) Another subsidiary of the or a holding company.

“Landlord” has the same meaning as provided in section 30B of the 1985 Act

“Person” means an individual or a company incorporated in England and Wales and registered at Companies House

“Leasehold property” means a dwelling subject to a lease which requires the payment of a service charge within the meaning of section 18 of the Landlord and Tenant Act 1985

“RTA” means a Recognised Tenants' Association within the meaning of section 29 of the 1985 Act

“Tenant” means the lessee for the time being of a lease which requires the payment of a service charge within the meaning of section 18 of the Landlord and Tenant Act 1985. Where the lessees under the lease are joint, “tenant” refers to both or all tenants together

“Tribunal” means the First-tier Tribunal (Property Chamber)

Number of tenants required to form a RTA

- 1) The minimum number of tenants required to form a RTA shall be 50% of the total number of tenants contained in the estate, in that part of the estate or in the block
 - a) in respect of which the tenants wish to form a RTA, and
 - b) identified in the application to the landlord or the Tribunal,

Plus the tenant of one leasehold property.

No leasehold property contained in the said estate or block of which the landlord and. or his/her/its associated companies is the tenant shall be included in the calculation of the minimum number of tenants.

- 2) A proposed RTA containing fewer than the minimum number of tenants specified in paragraph 1 above may be recognised under section 29 of the 1985 Act provided that it is approved by either:

- a) The landlord, who shall not unreasonably withhold approval, or
- b) The Tribunal.

Recognition of a RTA with fewer than the minimum number of tenants

- 3) Where a proposed RTA contains fewer than the minimum number of tenants, a notice given section 29(1)(a) of the 1985 Act and/or a certificate given under section 29(1)(b) shall be valid for:
 - a) A period of two years from the date on which the notice or the certificate is given, or
 - b) Such period as shall be agreed between the persons authorised under the constitution of the proposed RTA and the landlord, or
 - c) In default of agreement, for such period as the Tribunal shall order.

Recognition of the RTA

- 4) A proposed RTA shall be recognised only if :
 - a) It has a democratic constitution, and
 - b) Remains open to all tenants, including the landlord if he is the tenant of a property within the block or estate in question, and wishes to join.
- 5) The persons who will be authorised under the proposed RTA to act on its behalf shall provide to the landlord:
 - a) A list of the names of the tenants wishing to form an RTA;
 - b) The addresses of the properties of which they are tenants;
 - c) A correspondence address for each tenant, if different from the address in subparagraph (b) above, and
 - d) A copy of the constitution and list of persons authorised to act on its behalf.
- 6) Within one month of receipt of the items listed in subparagraphs (a)-(d) above, the landlord shall, in writing, inform the persons authorised to act on a proposed RTA's behalf that:
 - a) The proposed RTA has been recognised;
 - b) An extension of time is required for the consideration of the proposed RTA's application for recognition;
 - c) The proposed RTA's application for recognition has been refused.

The landlord shall give reasons for any decision under subparagraph (b) or (c) above.

Landlord's obligations towards the RTA

- 7) The landlord shall, on request from a person so authorised under the constitution of a proposed or established RTA:
- a) Send a letter to all tenants with the first service charge demand of the service charge period, and in any event no less frequently than once a year, inviting the tenants of the estate or block in respect of which an RTA is proposed or established, to join the proposed or established RTA, and
 - b) Comply with section 11 of the Leasehold Reform Housing and Urban Development Act 1993.
- 8) The RTA shall provide the landlord with sufficient copies of the letter for inclusion with the service charge demand referred to in paragraph 7(a) above.

Obligations of the RTA towards the landlord

- 9) On written demand from the landlord, but in any event no more frequently than once a year, an RTA must provide the landlord with the following information:
- a) The name of each member and the address of the leasehold property:
 - (i) held by that member, and
 - (ii) contained in the Estate or Block subject to the RTA;
 - b) The names of all members of the RTA who are authorised under its constitution to act on its behalf, and
 - c) Either a statement that the RTA has not amended and/or altered its constitution, or
 - d) A copy of any amendment and/or alteration to the constitution, and
 - e) A statement signed by two persons so authorised by the RTA, confirming that:
 - (i) The amendment and/or alteration was made in accordance with the constitution of the RTA and
 - (ii) The RTA remains democratic in the opinion of those persons.

Landlord's withdrawal of recognition

- 10) In the event of membership of the RTA falling below the number of tenants required by paragraph 1 above, the landlord may give not less than six months' written notice that recognition of the RTA will be withdrawn at the expiry of the notice period.
- 11) Any dispute under paragraph 10, including a dispute as to whether the RTA should remain an RTA, shall be referred to the Tribunal by either the RTA or the Landlord.

Martin Boyd
LKP/CARLEX

Amanda Gourlay
Barrister 16 July 2013