

RIGHT TO MANAGE

1 INTRODUCTION

a. Background

i. Previous legislation and transfers of rights to Tenants

1. 1967 L & T - purchase of Leasehold houses
2. 1987 L & T - right of first refusal; right to acquire L's interest (fault right to manage)
3. 1993 Lease hold Reform, Housing and Urban Development Act - right to acquire a new lease; lease hold enfranchisement; management audit

ii. Introduction of RTM Companies by the Commonhold and Leasehold Reform Act 2002

1. The intention of the Act was that a group of qualifying lessees could take over the day to day control of the management of their building without having to prove any failure on the part of the Freeholder to provide such a service properly and in accordance with the lease provisions and relevant statutory/regulatory controls.
2. Effectively they FORCE the Landlord to relinquish control of the property to the RTM Company.
3. It makes no difference if the Landlord's management has been good, bad or indifferent.
4. The act also empowered tenants who generally hold the majority of value in the Property to take responsibility for the management of their blocks.
5. RTM is NOT available to Lessees of houses.
6. In effect the process is the Lessee's serve on the Land lord of a Notice to exercise their power. After a period of time the management transfers to the RTM Company which has been set up for this purpose by the Lessees. Once acquired the Landlord is entitled to Membership of the Company.

iii. Initial considerations

iv. Can RTM solve the tenants "grievances"?

1. Historically ALL parties (landlords and tenants) have been very poor in this approach.
2. Some examples of problems lessees encounter and use as reasons for RTM:-
 - a. absentee landlords- unknown whereabouts or lack of contact;
 - b. lease variations - this is not a route to act "ultra vires". The RTM has no power to alter the terms of the demise, length of the term, re pairing obligations, or any other term of the Lease.
 - c. lack of redecoration of the block (under a landlord's covenant) resulting only because some lessees have not paid their service charge contributions.
 - d. "Poor" accounting (e.g. lack of balance sheet) information;
 - e. Save money on maintenance and repair; whilst a sensible objective does this bring conflict (where lessees have short term interests and the Company should have "long term" objectives). The building remains in the ownership of the Landlord with the lessees flats (probably) being their principal asset.

v. What problems will it inherit?

1. With the control of the tenant's most valuable asset – their flats - come duties and responsibilities.
2. RTM acquires the power to
 - a. make approvals (Licences)
 - b. enforce covenants
3. Lessees become wholly responsible for decision making
 - a. in terms of budgeting, reserve funds, standards of management, provision of services, etc.
 - b. for overall functions of the building
 - c. for "qualifying works (see Section 20 of Landlord & Tenant Act 1985 definition)
4. RTM can still be criticised as much as the Landlord - some tenants are not exactly rational in their expectations.

5. RTM will need to remain solvent
 - a. Tenants who default on payment will therefore need to be actively managed
 - b. Other income/reserves may be required
6. Neighbourly issues will be "closer to home" to deal with.
- vi. Are there sufficient persons with enough time and effort to continue the work?
 1. ALL Companies need direction in the "trading". RTM is no exception. The day-to-day work can be delegated to individuals or corporations (e.g. Managing agents) but ALL have to work within their instructions/rules.
 2. Division of responsibility is often a benefit to RTM Directors rather than allowing a small minority to suffer the burden of work.
 3. There will need to be regular (if not frequent) meetings to give direction to the Company's efforts.
- vii. Who will manage the building-the tenants or a managing agent?
 1. RTM is not "self-manage" although for some, this might be appealing if the expertise and time exist to do so. Often this is not the case and "outside" consultancy is required (either full or part time).
 2. Unless the estate is "small", it is suggested that management is best transferred to the professional abilities/expertise of a qualified agent. Management is a complex service requiring a number of different skills not easily acquired without proper training/learning.
 3. It's no good instructing a "managing agent" without being able to set them authorities and "limits" as otherwise the object of RTM is defeated - you simply replace one regime with another that the RTM has little control over.
 4. IT SHOULD ALWAYS BE THE RTM DIRECTORS who ultimately have control and take the lead on such matters. They are appointed by the Company Members and SHOULD represent their views in matters controlled by the Lease.
 - a. They HAVE to deal with all nominated matters in the manner prescribed by the Lease covenants - RTM is not a route for varying the lease terms.
 - b. Small numbers of Lessees in control might "harm" the future management of the building. There are a number of lessees who are know sitting with large credits to their service charge accounts which arise from their previous actions as Directors.
- viii. Old agent versus new?
 1. Dissatisfaction with the current agent is not always justified -they are after all only doing what their client instructs them to do.
 2. It probably arises because tenants aren't involved in the decision making process - which MAY alter with the RTM assuming management responsibilities.
 3. The same managing agent working from RTM instructions may prove to be entirely satisfactory.
 4. Changing agents
 - a. is an upheaval
 - b. may led to a loss of knowledge about the Estate
 - c. may not provide a more suitable candidate
- ix. Existing Contracts
 1. Saving money CANNOT be achieved by either allowing the property to deteriorate or by not providing essential services.
 2. Works have to (usually) be undertaken when necessary NOT when convenient.
- x. Practical knowledge?
 1. The tenants will be running a Company and therefore will need some familiarity with company procedures and compliance with the Companies Act - or employ someone to advise them
 - a. Management IS NOT acting as Company Secretary

2. Suitable people are required to be officers of the Company now and in the future preferably with some relevant experience or knowledge relating to the property, construction, finance, insurance, administration, etc.
 - a. They have a role as a Director
 - b. They have a role as a Landlord
- xi. Compliance with the RICS Code(s) of Practice.
 1. All "landlords" (which is effectively what an RTM is) should comply with statutory and regulatory requirements although in relation to the COPs' this is not mandatory
 - a. RICS - recognised by Leasehold Reform Housing and Urban Development Act 1993
 - b. ARHM
 2. Not to do so is a ground for a tenant to request the appointment of a Manager (Section 24 of the Landlord & Tenant Act 1987) and to end the RTM.
 - a. RTM
 - i. Preparation
 1. Qualification
 - a. The rules and procedures are complex but do need to be followed if the Freeholder is not to be afforded the opportunity to challenge the same.
 - b. A booklet on these rules is issued by LEASE and is called "THE RIGHT TO MANAGE". It can be downloaded from www.leaseadvice.org or requested by telephone on 0845 345 1993.
 - c. The building must meet certain conditions
 - i. It must be self contained or be capable of being redeveloped separately
 - ii. It must contain at least two flats
 - iii. Any non-residential part must not exceed 25% of the total floor area
 - iv. and a minimum number of tenants is required to take part,
 - v. Two thirds of flats must be let to qualifying tenants
 - d. A qualifying tenant is a leaseholder whose lease was originally granted for a term of more than 21 years.
 - e. There is no residence requirement nor any limit on how many flats can be owned by one person.
 - f. ONLY an RTM company can exercise the right and members MUST comprise a sufficient number of qualifying tenants. THIS IS AT LEAST HALF of the total number of flats in the building.
 - i. What happens when membership dwindles?
 - ii. Can a Landlord avoid getting into a situation where RTM can be exercised?
 - g. In an estate with several blocks, each would need to qualify separately and individual Notices served.
 - i. Is it sensible to take over the management of the Estate as a whole rather than individual parts of it?
 - ii. What are the difficulties in doing so?
 2. The Company
 - a. RTM is exercised by a Company NOT an individual
 - i. This has the advantage that as the tenants change overtime, there is some consistency in the Company providing the management services and retaining the right to manage.
 - b. There are statutory requirements for setting up and running the Company
 - i. It is a Company limited by guarantee.

- ii. It must be registered with Companies House.
 - iii. It must have a MEMORANDUM & ARTICLES of Association which govern the purpose and running of the Company which are prescribed bylaw (Statutory Instrument (2003No 2120)
 - c. Setting up the Company can be done by virtually anyone (e.g. Solicitors, company agent or individuals-any number of qualifying tenants can deal with this at the initial stage). Guides are available from Companies House, Crown Way, Cardiff, CF143UZ (t)0870 333 3636 (web) www.companies-house.gov.uk
 - d. Once established, the Company MUST then invite the rest of the qualifying leaseholder to join in.
3. Notice Inviting Participation
- a. ALL qualifying tenants are entitled to become members of the RTM Company
 - i. How do you establish who they are and how many there is of them?
 - b. No one may be excluded for any reason.
 - c. The landlord is ALSO entitled to membership once the right has been acquired by the Company.
 - d. The notice inviting participation MUST
 - i. Be in writing
 - ii. In the prescribed form
 - iii. Be served on all qualifying lessees who are not already members; not already agreed to become members; both at the time of service,
 - iv. Contain a statement that the RTM intends to acquire the right to manage;
 - v. State the names of the members
 - vi. Invite the recipient to become a member
 - vii. Provide other regulatory information (e.g. Company registration; list of Directors/Company Secretary; name of the Landlord(s).
 - e. Other matters that must be included in the Notice are:
 - i. Whether the RTM is to employ a new managing agent (including their details) or retain the existing one. If they are to "self-manage" they must state the experience of the existing members.
 - ii. A statement of the RTM intention to take over the landlord's functions under the lease. It must make it clear these will not apply to the commercial parts of the property or flats still under the control of the Landlord. It must also make it clear that the RTM will deal with enforcement of covenants and granting of approvals.
 - iii. A statement that each member is liable for the Landlord's reasonable costs arising from the service of the Notice.
 - iv. The notice MUST be accompanied by the MEM & ARTs of the RTM Company or state where they can be inspected and copied.
 - f. The notice can be served by post or hand delivery to all the flats (unless the qualifying leaseholder has already notified the Company of a different address for service. The flat is the "qualifying address".
 - g. The address for service MUST be in England or Wales. If the lessee is permanently abroad, reasonable effort should be made to

- send the Notice but the RTM is not obliged to serve it outside England or Wales.
- h. Not following the requirements may provide the Landlord with the opportunity to challenge the constitution of the RTM Company (as not everyone is invited to participate).
 - i. Keep receipts of posting/delivery to limit this challenge,
 - j. ALL those responding to the invitation MUST be enrolled as members and company records altered accordingly.
4. Obtaining information
- a. Ready to proceed (having formed the Company and invited participation) the RTM should seek certain vital information on the current management processes before doing so.
 - b. There are statutory rights to require the landlord to provide information and for inspection of the premises as well as other "public" records to acquire necessary information. These include
 - i. LANDLORD & TENANT legislation
 - 1985 ACT- landlord's name and address (of requested must be provided within 21 days)
 - 1985 ACT- annual statement of expenditure and inspection of documents relating to it
 - ii. LAND REGISTRY (as long as the property is registered)
 - Inspect the register and obtain copies of the Freehold certificate this will provide the details of the registered owner(s); any other interests in the Freehold; a list of leases registered against the title; mortgagees.
 - DISTRICT REGISTRIES (a small number not necessarily in the same location as the area they serve).
 - iii. INFORMATION NOTICE -Section 82 Commonhold & Leasehold Reform Act 2002. This notice (served by the RTM Company on the Landlord) allows acquisition of information that the Company *"reasonably requires for ascertaining the particulars to be included in a (RTM) claim Notice"*.
 - THIS IS A RESTRICTED POWER.
 - It must be complied with within 28 days
 - Where the information is contained in "documents", the notice can require the Landlord to allow inspection and copying of the same.
 - c. The RTM company really needs to know what it is taking on and how it should be done, BEFORE DOING SO!
 - d. Information will vary from estate to estate but the following is a basic list to start the ball rolling:-
 - i. The immediate LANDLORD'S (full and proper) identity and address for service of notice(s). This should already appear on the previous demands for service charges/ground rents;
 - ii. ANYOTHER LANDLORD'S (full and proper) identity and address for service of notice(s);
 - iii. Full names and addresses of ALL the leaseholders in the building;
 - iv. Details of any non-residential or commercial use of the building;
 - v. The current service charge arrears position;
 - vi. The insurance arrangements for the building;
 - vii. Full details of the current managing agents and a copy of their contract / instructions;

- viii. Full details of any current contract for administration and maintenance of the building and/or provision of services,
 - ix. Copies of ALL CURRENT risk assessments, registers (and ALSO PREVIOUS) surveys / inspection reports relating to the building
5. Plans & budgets
- a. There is no requirement for a Company business plan (or budget) or any statement as to HOW the RTM intends to manage the building.
 - i. No such requirements on Landlords
 - b. REFER TO NOTICE INVITING PARTICIPATION –whether or not to use an agent.
 - i. They should interview a number of possible candidates (including the existing agent);
 - c. To be prudent in its future venture the RTM might like at this stage to consider
 - i. Its available experience/expertise
 - ii. Its motives for RTM
 - iii. How it can "save" money and improve service standards;
 - iv. How is can streamline decision making;
 - d. There is no requirement to produce a service charge budget- but it is too late once the right to management commences, so it might be prudent to do so at this early stage.
 - i. This can be used to inform participants of the anticipated costs of their intended action;
 - ii. Where funding is to be obtained from;
 - iii. What services are to be provided;
 - e. Prudent planning for the future is essential (especially in larger buildings) and consideration to drafting a planned maintenance programme (say over a 25 years period) must be given.
 - f. Any budget should include VAT, taxes and fees for both cyclical and irregular costs (which will help form the start of a reserve fund).
 - i. Often expectations on budgets/costs are the primary reason for dissatisfaction with management and largely arise from differences in the long term objectives of the Landlord and short term goals of the Lessees,
 - ii. RTM MUST manage the building sensibly and in accordance with the terms of the lease (which are long term).
- ii. Exercising the Right
- 1. Notice of Claim
 - a. The claim can only be exercised where
 - i. The building complies
 - ii. RTM Company meets the statutory requirements
 - iii. At least half the flats in the building demised to qualifying tenants participate.
 - b. The claim cannot be made within 14 days of the date of service of the Notice Inviting Participation.
 - c. As already said, the right is exercised by the service of a Notice of Claim.
 - d. It MUST be served on:
 - i. The Landlord of all or any part of the premises;
 - ii. Any intermediate Landlord(s);
 - iii. Any party to the Lease other than the lessee(e.g. a nominated management company)

- iv. Any Manager / Receiver appointed by a Court or Tribunal under Part 2 of the Landlord & Tenant Act 1987 and a copy must also be sent to the relevant Court or Tribunal.
 - e. The Notice (in prescribed form-Statutory Instrument (2003 NO 1988)) must
 - i. Be in writing
 - ii. Specify the premises and include a statement as to how they comply with the qualification for RTM;
 - iii. State the full names and address(es) of each person who both is a qualifying tenants and a member of the RTM;
 - iv. Of those persons provide sufficient detail of his or her lease to identify the flat and to show the date it was entered into; its term and date of commencement;
 - v. The RTM company name and registered office details;
 - vi. The date for a counter notice to be served by, not within one month of the date of the Notice of Claim;
 - vii. the date the RTM intends to take over the management of the premises (at least three months after the date of the Notice of Claim -the RTM Company should consider seriously its proposed date to allow sufficient time to make all necessary arrangements for a smooth transfer),
 - viii. A statement telling the Landlord to advise the RTM if there are any inaccuracies in the Notice;-this may not invalidate the Notice (provided it was "carefully" drawn up);
 - ix. A reminder to the Landlord to serve "contract" and "contractor" Notices if they have no objection to the claim
 - x. A reminder that the Landlord has a right to membership of the RTM Company;
 - f. The Notice should be registered at Land Registry on the property title to alert interested parties (e.g. if the Landlord tries to sell the Freehold to another person) and allow the procedure to continue if the transaction proceeds on the same time scale.
2. Absent Landlords
- a. This is no obstacle to RTM. The Leasehold Valuation Tribunal has the power to issue an Order entitling RTM to take place on application to them.
 - b. However, before doing so the RTM must take reasonable steps to try to find the missing Landlord;
 - c. If still unsuccessful it MUST inform ALL lessees of the intention to seek an Order.
 - d. If found before the Order is issued, the LVT will decide how the matter should proceed.
3. Right for access for inspection
- a. Section 83, Commonhold and Leasehold Reform Act 2002 allows the RTM to require access to *"any part of the premises if that is reasonable"* in connection with the claim.
 - b. They must give at least 10 days notice of the requirement but there is no prescribed form for this.
 - c. The right is exercisable by *"any person authorised to act for the RTM Company"*. The most relevant issues/ persons involved are likely to be
 - i. Centralised Plant (e.g. Lifts, Boilers, Air-conditioning, Water and Drainage pumps, etc) Engineers
 - ii. Building Fabric Surveyors

- d. The right is only available AFTER service of the Notice of Claim.
 - e. The same right is given to the Landlord (who may wish to view the internal condition of the flats) and other recipients of the Notice of Claim.
4. The Landlord's counter-notice
- a. This is to be served NO LATER than the date set out in the Notice of Claim.
 - b. It is not an opportunity to raise queries.
 - c. The Notice (in prescribed form) must either
 - i. Agree to the RTM
 - ii. Give reasons why the RTM Company is not entitled to proceed.
 - d. If the Landlord agrees the management passes to the RTM Company on the date in their Notice of Claim. Similarly if no counter notice is served, the RTM acquire the right on the date in their Notice of Claim.
 - e. The grounds that a Landlord might allege as a barrier to qualification include:-
 - i. The building does not qualify;
 - ii. RTM Company does not comply with statutory requirements;
 - iii. Members do not represent 50% of the flats in the building.
 - f. The REASONS for the alleged non-qualification must be stated and referenced to the ACT requirements.
 - g. It must also
 - i. State the right for the RTM Company to apply to the LVT for a determination of the issue(s);
 - ii. State that the RTM will not acquire the right unless the LVT determines in their favour or the Landlord subsequently agrees.
 - h. An application (no prescribed form) to the LVT must be within two months of the date of the Landlord's counter-notice; (otherwise a deemed withdrawal).
 - i. Right of Appeal to the Upper Tribunal (Lands Chamber)
5. The Landlord's costs
- a. The RTM must reimburse the Landlord any REASONABLE cost he has incurred in the process.
 - i. There is no reason for the Landlord to suffer (especially as this is a "no fault" RTM).
 - b. Costs are referred to in the ACT as "in respect of professional services" for which the Landlord was "personally liable".
 - c. This should include:-
 - i. Legal fees and expenses in dealing with the Notice(s)
 - ii. Accountancy & audit costs arising from the provision of responses to Notices, accounts and transfer of monies;
 - iii. Solicitors and managing agents costs in dealing with the hand-over of management records and functions.
 - d. It will not include:-
 - i. Costs relating to LVT hearings, (except where the Tribunal find against the RTM Company)
 - e. Costs are recoverable whether or not the RTM claim proceeds or is withdrawn (including a deemed withdrawal)
 - f. "Winding up" an RTM Company as an attempt to avoid reimbursement will not succeed as each and every Member of the Company is liable for the Landlord's reasonable costs.
- iii. Taking Over
1. The acquisition date

- a. This is the date on which the RTM Company formally takes control of the management from the Landlord.
 - i. Where there is no dispute, this will be the date in the Notice of Claim;
 - ii. Where there is a dispute, it will be three months from the determination of the Tribunal (LVT or Land's Chamber) becomes final;
 - iii. Where there was a dispute subsequently agreed by the Landlord, it will be three months from the date of that agreement;
2. Membership-including the Landlord
 - a. The Landlord is entitled to membership of the RTM Company on the day that it takes over management.
 - b. It applies to ALL Landlords.
 - c. He has full membership rights.
 - d. He is not obliged to become a member
 - e. His "voting" rights will be as the Landlord plus additional votes for any retained units in his control.
 - f. Allocation of "Votes" is complex and completed on a pro-rata basis to the number of landlords. Therefore flat members are unlikely to be "out-voted" by large numbers of Landlords, (e.g. If there are five landlords, then each flat owner would be allocated five votes, whilst landlords each have one). Don't forget however that Landlord also gets a vote for each flat he retains (e.g. on a periodic tenancy), for the caretaker's flat, and any "non-residential unit.
 - g. If the Landlord retains 50% of the flats in a block, this will not stop RTM but will give him a majority vote (as he gets one extra vote as Landlord on top of his voting allocation for each of his flats).
 - h. Votes for "non-residential "units are allocated on an "internal floor area" (the relationship being between residential and "non-residential" parts (excluding communal parts) as they are non-qualifying units for the purpose of RTM.
 - i. The calculation is the total votes for residential parts x A/B (where A is total floor area of the non-residential part and B is the total area of the residential parts.
 - j. Calculations are made in square metres and fractions of less than 1/2 sq. m are ignored.
 - k. Disputes over measurement are dealt with by the Company's Mem and Arts. It provides for independent measurement and certification by a Chartered Surveyor (appointed by agreement between the parties or the RICS in default). His decision is binding.
 - l. Fees are payable by the RTM or at his discretion by individual members raising the query.
3. Landlord's duty- information
 - a. Detailed information about the management of the building in its current form and according to the responsibility of the leases is NEEDED by the RTM Company before the acquisition date.
 - b. The landlord has a duty to provide whatever is "*reasonably required in connection with the exercise of the right to manage*". This is different from the request for information (which was in connection with the purpose of serving the Notice of Claim).
 - c. The landlord HAS to provide this information (for the proper management of the building) when asked to do so, BUT DOES NOT HAVE TO VOLUNTEER IT.

- d. Typically the types of information required will include copy contracts, service charge accounts, specifications of works, maintenance schedules, etc., as well as the opportunity to view information (e.g. expenditure vouchers).
 - e. A Notice served on the Landlord must be complied with within 28 days BUT NOT NECESSARILY BEFORE the acquisition date. So if you serve the notice say 10 days before the acquisition date, it must be responded to within 18 days after the acquisition date.
 - i. The landlord has time to collate the required information but does not have to release it (e.g. in case it is sensitive) before the RTM company actually takes over.
 - ii. If the notice is served 28 days before the acquisition date, it will have the information on the day it takes over,
 - iii. Delays in service might prove to be a problem as if the information is needed the Landlord could legally withhold the same for up to 28 days.
 - iv. A reasonable Landlord probably will not delay as this could compromise his long term interest in having the building properly managed.
4. Transfer of funds
- a. Unspent service charges collected in advance MUST be transferred to the RTM Company.
 - b. This includes any RESERVE FUNDS
 - c. The transfer is REQUIRED (without notice) ON the acquisition date or "as soon as reasonably practical" thereafter.
 - d. The amount to be transferred is:-
 - i. Monies paid by leaseholders as service charges; plus
 - ii. Monies invested from service charge payments (and any interest); less
 - iii. The landlord's outgoings on the provision of services up to the acquisition date.
 - e. The RTM is not required to have any capital, however it is difficult to see how this would not be required when these uncommitted funds do not necessarily have to be transferred on "day one" yet the RTM may have continuing commitments to service.
 - f. Control of the uncommitted funds is fundamental in such case yet it may be difficult to agree what monies are due to be transferred since accounts are not always "up-to-date".
 - g. The LVT has jurisdiction to order what monies are to be transferred (upon application to them). This can be "long winded" and in all circumstances, it is always best for the RTM and Landlord to agree what should be transferred or to have an "external" audit completed (perhaps paid for by the RTM Company).
5. Management Contracts
- a. The Landlord is likely to have a number of contracts already established for administration and maintenance of his estate. These could include gardeners, cleaners, utility suppliers, managing agents and the like.
 - b. The RTM needs to establish what these are and the "suppliers" need to be aware of the intended management takeover. This is necessary for as the Landlord is no longer able to fulfil his side of the contract (as the RTM takes over responsibility for the management) as the RTM becomes responsible for the management processes and they have to make a decision as to

whether to "renew" the current arrangements or enter into new contracts with new suppliers.

- c. TIMING is everything-to ensure continuity of services.
- d. It is the Land lord's duty to ensure that parties are aware through service of Contract and Contractor notices.
 - i. Contractor Notices - Served to ALL contractors appointed by the Landlord, the notice must be include
 - Identity of the contract
 - A statement that the RTM company is acquiring the right to manage
 - Name and registered office of the RTM Company
 - The acquisition date
 - A statement advising the contractor who wishes to continue providing services to contact the RTM Company.If the services are sub-contracted, the contract must send a copy to that sub-contractor,
 - ii. Contract Notices - Served to the RTM Company and must contain
 - Particulars of each existing contract, including the name and address of the contractor;
 - A statement advising the RTM to contact the contractors it wishes to retain the services of;
- e. IT IS REQUIRED of the Landlord to provide a copy of the Contracts.
- f. The notices should be served as soon as possible after the Landlord receives the Notice of Claim but no later than "as soon as reasonably practicable" after the determination date (specified in the Notice of Claim for service of the Landlord's counter notice, the final date of the LVT Order or date of subsequent agreement by the Landlord).
 - i. There is three months between Determination Dates and Acquisition Dates,
 - ii. These details can be obtained by good initial enquiries and other methods (e.g. management auditing).
- g. Employment
 - i. Agency Workers versus Staff
 - ii. TUPE
 - iii. NI and TAX
- h. Insurance
 - i. What to insure
 - ii. Values
 - iii. "Tied agency" and lease terms
 - iv. Commission
- iv. Management Functions of an RTM Company
 - 1. On the acquisition date the RTM takes over ALL management functions under the Lease. This will include the direct and indirect Landlord's (e.g. RMC) functions,
 - 2. The functions are defined in the legislation as "*functions with respect to services, repairs, maintenance, improvements, insurance, and management*".
 - 3. What is NOT included
 - a. The management of any "non residential parts" of the building or any "non qualifying flats".

- i. Non-residential parts" might include shops, offices, garages or storage areas (so long as they are not part of the leases). The management responsibility remains with the Landlord.
 - ii. "Non-Qualifying Flats" - landlord owned and let flat in the building other than on long leases remain with the Landlord for management purposes. He is responsible to the RTM Company for their contribution to the service charges. Internal repairs are down to the Landlord whereas those to the surrounding structure fall to the RTM Company.
 - b. Forfeiture and possession
 - i. THIS IS CANNOT BE EXERCISED by the RTM Company. This is particularly relevant for if (for example) collection of arrears is problematic and the RTM cannot use other enforcement means (e.g. debt collection proceedings) its only recourse is to seek the cooperation of the Landlord.
 - c. Approvals
 - i. Where consent of the Landlord is required under the lease terms (e.g. sub-letting, assignment, alterations, etc.,) the power to issue approval passes to the RTM Company.
 - ii. They MUST keep the Landlord informed of consents they intend to give by serving notice to him
 - o 30 days beforehand in cases relating to assignment, sub-letting, placing a charge on a unit, parting with possession, making structural alterations or improvements or change of use.
 - o 14days otherwise,
 - iii. Where the landlord does nothing in response, they may proceed, as the Landlord's specific consent is not required,
 - iv. If he objects permission may not be granted until the Landlord withdraws their objection or an Order from the LVT is obtained,
 - v. The landlord must show his objection by a Notice served to both the RTM Company and the Lessee concerned (and sub-tenants when sub-letting).
 - d. Enforcement of Covenants
 - i. The landlord is still responsible for some covenants (e.g. quiet enjoyment and rights of support),
 - ii. Otherwise the obligations under the lease become the responsibility of the RTM to comply with and they must keep the Landlord informed of any breaches,
 - iii. The RTM has a statutory obligation to review all the leaseholders' compliance and take steps to ensure breaches are remedied,
 - iv. The landlord may act in FORFEITURE for any notified and unremedied breaches,
 - v. Rights of Access under the lease reserved for the Landlord to ensure compliance or for enforcement are also exercisable by the Landlord.
- 4. What is included
 - a. Insurance
 - i. Arranging insurance for the building
 - b. Health & Safety-compliance with statutory and regulatory controls including provision of
 - i. Fire Risk Assessments
 - ii. Condition Risk Assessment

- iii. Asbestos Risk Assessment and Register; Management Methods
 - iv. Electrical Safety
 - v. Water Safety
 - vi. Lift Plant Safety Certification
 - vii. Gas & Boiler Plant Safety Certification
 - viii. Air Conditioning Safety Certification
 - c. Repairs
 - i. Typically includes redecoration and repair/maintenance of the building, structure plant and machinery including cyclical and seasonal work.
 - ii. It might include "improvements if they are contained within the lease.
 - iii. Provision of services (e.g. lighting of the communal parts, cleaning, caretaking, etc.)
- 5. Finance
 - a. The right to collect "rent" (including ground rent) does not pass to the RTM.
 - b. Levying and collection of service charges including
 - i. Accounting Procedures
 - Company-provision of statutory returns, update and holding of
 - Company records
 - Service Charge - annual certification in accordance with lease terms
 - ii. Budgets & Interim charges - preparation of short and longer term financial plans
 - iii. Reserves- inclusion of a provision (subject to the lease terms) future predicted expenditure.
 - iv. Collection of Arrears-all monies due to the Land lord before the acquisition date remain payable to him.
- 6. "Striking off" or ending the RTM Company
 - a. RTM is not subject to time limits or a need to review. It continues until it is terminated,
 - b. Termination is brought about by;
 - i. Agreement with the Landlord;
 - The Landlord must agree to take back the management - it cannot be forced on him
 - ii. On collapse of the RTM Company the right to manage ceases and management responsibility returns to the Landlord.
 - Winding up of the Company
 - Receivership
 - Voluntary insolvency
 - Striking off the Company's register
 - iii. Appointment of a Manager
 - Part 2, Landlord & Tenant Act 1987 - LVT appointment
 - Breach of an obligation under the lease;
 - Demanded or likely to demand unreasonable service charges
 - Non compliance with approved CofP
 - Just and convenient circumstances.
 - c. Further RTM rights cannot be acquire for a further four years.

- a. Leaseholders form RTM Company and register at Companies House
- b. S82 Right to Information Notice served (discretionary);
 - i. Landlord responds in 28 days
- c. S78 Notice inviting Participation served to ALL qualifying Lessees who are not Company members
- d. S79 Notice of Claim served 14days after service of S78 Notice Inviting Participation.
 - i. Determination date is at least one month after date of service of S79 Notice
 - ii. Acquisition date is at least three months after the proposed date for the Landlord's Counter Notice.
- e. RTM or Landlord serves S83 Right of Access Notice (discretionary)
 - i. Parties must respond within 10 days
- f. Landlord may serve S84 counter-notice
 - i. Accepting claim
 - ii. Disputing the claim
- g. If served and disputed the RTM Company must apply within two months of date of counter notice to LVT for determination
- h. S92 Contractor and Contract Notices served by Landlord on determination date or "as soon as reasonably practical" after that.
- i. S93 Duty to Provide Information Notice served by RTM
 - i. Landlord must respond within 28days of date of Notice (but not necessarily before the acquisition date),
- j. Acquisition Date is
 - i. Date set in the Notice of Claim- where landlord agrees or does not serve counter-notice
 - ii. Three months after final date of LVT decision where disputed by Landlord and confirmed by tribunal;
 - iii. Three month after date of Landlord's agreement where initially disputed but later agreed,
- k. Landlord may take up membership
 - i. RTM allocate votes
- l. Landlord transfers all uncommitted funds on Acquisition Date of "as soon after that date as is reasonably practicable",
- m. RTM must give Notice to Landlord of intention to grant an approval under the lease.