

Right to Manage in Leasehold Retirement Housing

A Case Study

Many older people looking for a suitable retirement home to move to will opt for an apartment, in a good location and within a development built specifically for older people, for example. Most apartments available to purchase are leasehold, some available on a shared ownership basis, some are available to rent from a private landlord, or more commonly, a social landlord. With all of these options, the management of the building will incur a charge for services provided to maintain and manage the building, no matter who the landlord is. This briefing provides a case study of where residents exercised their “right to manage”, setting out the lessons and issues.

The case study relates to leasehold retirement accommodation where a developer has built a property specifically for older people to buy their flats as leaseholders.

What does leasehold mean?

The developer is effectively the landlord and the purchaser is buying a long tenancy (Lease). The landlord retains ownership and responsibilities for the building and the land it stands on.

What is leasehold retirement housing?

The most common type of leasehold retirement housing is a large single building with apartments and often some shared facilities such as a communal lounge, lift and external grounds. As well as the purchase price for an individual apartment, leaseholders also pay a ‘service charge’ to meet the service, management and maintenance costs of the building. Most private developers transfer the management of retirement housing schemes to a management organisation, which may be a private company or housing association. While housing associations are regulated and management is monitored, the private sector has not been subject to the same scrutiny until quite recently with the introduction of the *Commonhold and Leasehold Reform Act 2002* which came into force on 30 September 2003.

What does ‘management’ mean in this context?

The management organisation is responsible for the day-to-day management and for ensuring that necessary services are provided including buildings insurance, provision of any scheme manager, upkeep and cleaning of communal areas such as corridors, lifts, communal lounge, external grounds, and the repairs and maintenance to the structure and shared facilities of the building.

It would be considered good practice for managers to have regular meetings with leaseholders and listen to their issues as well as inform them of proposed changes to any arrangements including maintenance and charges.

Some will be members of the Association of Retirement Housing Managers (ARHM). This is a voluntary membership organisation which has produced and revised a Code of Practice for England, approved by the Government under the “Leasehold, Housing and Urban Development Act 1993” and received Government approval under Order 2016 no. 505, effective from 1st June 2016.

While this does not provide any specific safeguards for leaseholders, the Code of Practice is the benchmark used by the Leasehold Valuation Tribunal, the court appointed to judge in disputes between landlords and leaseholders.

What does 'Right to Manage' mean?

Under the Housing (Right to Manage) (England) Regulations 2012, leasehold tenants have the right to arrange their own management through the establishment of a 'Right to Manage' company. This must be the wish of at least 50% of leaseholders where they agree that the Managing Agent needs to be replaced. This may be for reasons of financial incompetence, poor communication with leaseholders, lack of transparency or any other reason that the leaseholders agree.

The 'Right to Manage' company, once legally established as a company with directors and a company secretary, can then either manage the property themselves or agree to appoint alternative managing agents.

Does the whole block have to be owned?

One condition of the "Right to Manage" is that the **whole** building, and it can only be one building, must be leasehold so the option to self-manage is not available to those developments where some residents have freehold or shared ownership or live in another building. The right to manage is only available to leaseholders of flats, and *not of houses or bungalows*. This is not to say that some people do not rent their flats within an apartment block but there must be someone who owns the lease to be part of the "Right to Manage" company.

CASE STUDY



Fernwood

“Located in central North Wirral, Upton’s picturesque setting boasts the famous skylines of the Mersey to the East, the wild beauty of the Dee estuary to the Southwest and the seaside towns and beautiful Liverpool Bay to the North. Fernwood is set in its own sheltered and secluded garden where rare plants blossom in the mild climate. Proud of its informal and neighbourly atmosphere, residents of Fernwood get together regularly for social evenings and coffee mornings.

Fernwood is managed by the leaseholders under an organisation called Fernwood Wirral RTM Company Limited with effect from 28 November 2014, however (Alpha (RSL) Limited) is the appointed managing agent.

Taken from the EAC website.

Fernwood is a private retirement housing development built in 1988 and owned by a local developer. The landlord retains the freehold of the building and individual flats were sold on a leasehold basis with the only age specific provision in the lease being that residents must be over 60 years old.

The building is made up of 32 one and 2 bedroom apartments with a communal lounge and laundry facility as well as extensive gardens. Approximately half of the residents are leaseholders themselves and the other half rent their apartments, although in a number of cases, the leaseholder is also a family member of the resident who pays rent.

The landlord appointed managing agents from the beginning but continued to have a good close relationship with residents through regular contact.

The property maintenance and day to day management was undertaken by the managing agent. The managing agents were a separate organisation who organised the buildings insurance, repairs and a maintenance programme, as well as appointment of support staff.

Over time, both residents and the landlord became increasingly dissatisfied with the managing agent and their failure to maintain the building. Some residents had become particularly unhappy about the charges they were being asked to pay by the managing agent.

One unsatisfactory incident involved leaseholders being asked for a lump sum to replace the lift in the building, which resulted in at least one resident putting his flat on the market. Some of the residents made their own enquiries as to how much a replacement lift would cost, (far less than they were being charged) and confronted the managing agent and the landlord. The landlord then sacked the managing agents, without consultation with the leaseholders, and set up his own management company to maintain the building. This lack of consultation rallied the residents and they began to mobilise.

In 2012, in an effort to have a unified voice, some of the residents started to organise with their neighbours into what they hoped might become a residents association so that they could challenge decisions that affected them all. Enough people with the energy and expertise to pursue these issues came forward.

As members of their local Older People's Forum housing group, some of the leaseholders learnt about the 'Right to Manage' at a regional forum on ageing conference. They formed a small group in their building to look into the possibility of their block taking over the management of their building so they could appoint the manager rather than the landlord or taking on the management of the building themselves.

Through their membership of Wirral Older People's Parliament, they had met the senior manager of a local specialist housing provider, Alpha Homes, who was also interested in how 'Right to Manage' might work in retirement housing and how it is arranged. They worked together with Fernwood residents and supported them through the process, not with a view to becoming the managing agent but as a piece of experiential learning.

From the initial exploration of the possibility of becoming a Right to Manage company to registration took just over 12 months. During this time, the leaseholders were meeting to discuss the issues they had with the existing management company, looking for alternatives, discussing the options with the landlord and taking the legal steps required to set up their Right To Manage Company. The Fernwood Wirral RTM Company Limited was registered on 22nd April 2014 and the work began to appoint their own management company.

Lessons learnt:

- You need a proportion of residents with the energy and interest in going through the lengthy process to form a Right to Manage Company. The Fernwood experience would suggest that the minimum is six people.
- The residents need the right level of knowledge, understanding and commitment to get through the process of setting up the Right to Manage Company.
- You need a good pool of people committed to being directors of the RTM (Right to Manage) company who are also willing to chair and run residents meetings.
- If too many of the people involved in setting up the Right to Manage company are not resident, perhaps because they live elsewhere for much of the time or are family members who have bought flats for relatives, there is not the same understanding of how the building operates on a day to day basis or how the Right to Manage company needs to invest in a maintenance programme which may well carry on while they are away or after they have left.
- While everyone involved may have been a homeowner, undertaking and participating in the management of a board and appointing a suitable management company is another skill-set that not everyone has or wants to develop.

Issues to be considered when embarking on a Right to Manage Company:

BEFORE

- Would organising a tenants group be sufficient to give a voice to residents' concerns with existing managing agents and the landlord?
- Are the leaseholders wanting to take over management or do they really want to have freehold? They are not the same thing.
- Clarity about the desired outcome.
- Are all the leaseholders interested in taking over the management of their building?
- Is the landlord amenable to negotiation over the management?
- Is there a suitable alternative to the existing management company?

DURING

- Regular and frequent communication is required to keep all leaseholders on board with the process.
- Having external technical support throughout the process will help to give residents confidence to see the lengthy process through.
- Having a good chair and board of directors to oversee creation of the Right to Manage Company and involve all the leaseholders is important to the smooth process and transition.
- Having a good chair and board of directors is vital to the continuing success for the Right To Manage Company

ONGOING

- Once the Right to manage company is established and new management arrangements are in place, they will need regular review at both company meetings and leaseholder meetings to keep both leaseholders and residents engaged.
- Looking to the future, there is the need to plan ahead and involve those who might be interested and willing to take on the directorship of the RTM Company.

Resources

Government information:

<http://www.legislation.gov.uk/ukpga/2002/15/part/2>

<https://www.gov.uk/leasehold-property/right-to-manage-and-management-disputes>

Leasehold Advisory Service

<http://www.lease-advice.org/publications/documents/document.asp?item=21>

References:

Association of Retirement Housing Managers

<http://www.arhm.org/index.cfm>

Campaign Against Retirement Leasehold Exploitation

<http://www.carlex.org.uk/about/right-to-manage/>

Right to Manage in the News:

<http://www.independent.co.uk/money/leaseholders-have-the-right-to-manage-their-homes-9085010.html>

<http://www.theguardian.com/money/2013/aug/31/leasehold-property-grip-finances>

<http://www.theguardian.com/money/2011/feb/12/peverel-property-management-tenant-rebellion>

<http://news.bbc.co.uk/1/hi/business/3149402.stm>

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Published May 2016