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FIRST GUIDANCE FOR FREEHOLDERS OF HOUSES ON PRIVATE ESTATES

The right to have service charge money held in trust, to challenge its reasonableness, to see a summary of costs and to be consulted on major works - these are just some of the protections open to leaseholders. Freeholders living on a private estate with obligations to pay service charges for the upkeep of common areas, on the other hand, do not enjoy the same protection even though they are paying for the same service and possibly even into the same fund as leaseholders. It is with this in mind that the Association of Residential Managing Agents (ARMA), whose main role is to provide support and guidance on the leasehold system, has decided to publish its first guidance for freeholders ('Freeholders of Houses on Private Estates'), encouraging them to be aware of the rights they do have when paying service charges.

It is quite normal for freehold houses to be built as part of a private development where the homeowners are expected to contribute to the upkeep of common areas by paying into a service charge fund. These common areas may be private roads, landscaped gardens, electric gates or sewage pumps and the obligation to maintain them will be stipulated in the freeholders' deed of transfer. The deed may also set out exactly what items of cost they must pay for, in what proportion, on what dates and whether annual statements of accounts will be drawn up. It is usual for the residents to form a Residents Management Company (RMC) that owns the common areas with each freeholder becoming a member. This company might choose to appoint the services of a managing agent to maintain the common areas on their behalf. So far, the similarities to the leasehold system where leaseholders must contribute to the upkeep of the common areas of their block of flats via service charge payments seem striking. But the comparability stops there. An important legal distinction exists in that the Government has passed a number of Acts of Parliament

giving rights and added protection to leaseholders of flats that pay service charges which do not apply to freeholders. Indeed there is even a different legal term for a freehold service charge: 'rent charge'.

"If a leaseholder feels their service charge payments are unreasonable, they have the right to challenge it at a Leasehold Valuation Tribunal; if they are not happy with how their money is being spent they have the right to request a summary of costs; if the managing agent wants to spend significant amounts of their money, they have the right to full consultation. But freeholders paying service charges for the upkeep of the common areas on their development do not have anywhere near the same rights" comments ARMA's chairman Peter Denning of Pennycuik Collins in Birmingham. "One of ARMA's major roles is to provide guidance on the leasehold system but where freeholders are contributing to service charge funds, the processes are the same for both tenures yet the protection of those funds and the rights of those paying them is not. It is because of this imbalance that ARMA has taken the decision to produce guidance for freeholders to improve their understanding of the service charge system and raise awareness of the rights they do have."

The new guidance document from ARMA provides an overview of the scenario where freehold houses exist as part of a private estate with obligations to pay for the upkeep of common areas. It explains restrictions that may be in place on the common areas, an explanation of rent charges, the role of managing agents and what recourse is available for freeholders who are dissatisfied with the charges or their managing agent as well as their other rights. The document can be downloaded freely from www.arma.org.uk.

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Notes to Editor:

1. Formed in 1991, ARMA is the only body in England and Wales to focus exclusively on matters relating to the management of long leasehold residential property. The association has over 250 firms in membership that between them manage in excess of 850,000 units in more than 34,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties). ARMA's founding principal aims are to represent its members and the interests of lessees, resident management companies and investor freeholders.
2. More information on ARMA can be found at www.arma.org.uk

3. Press release in Word format available on request

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