

IMPORTANT NOTE TO MEMBERS: Guidance Notes are produced for the use of members only; they should not be distributed to third parties unless the particular GN has a note to that effect. Members' attention is specifically drawn to the boxed note at the end of the GN regarding its use.

SUMMARY

- Landlords and agents should encourage the formation of and co-operate with properly constituted and democratically run associations.
- Agents should have a procedure by which to voluntarily give recognition to resident associations, subject to your client's instructions and subject to the association representing the majority of lessees.
- Recognition gives additional legal rights for an association.
- There is a choice of model constitutions you can encourage new associations to adopt.

ARMA provides a model attached to this guidance note.

GENERAL APPROACH TO RESIDENTS ASSOCIATIONS

It is good practice that landlords and agents should encourage the formation of properly constituted associations in order to assist with the management process, where there are no resident management or right to manage companies in existence.

Associations are often formed in response to a problem and the scene is set immediately for a confrontation with either the freeholder or the agent, or both. How much more productive the relationship could be if, from the outset, the agent is able to bring the lessees into the management process, in a structured way, in order that everyone can feel part of the management process and lessees can understand better the decisions being made which ultimately they pay for.

RECOGNITION OF RESIDENTS ASSOCIATIONS BY THE RENT ASSESSMENT PANEL

Lessees have the right to form an association and for that association to be recognised either voluntarily by the landlord or compulsorily through the Rent Assessment Panel.

An association has the legal right to ask a Rent Assessment Panel to grant it the status of a 'recognised

tenants' association'. This is the term used in statute law. If granted the association can serve notice on the landlord and so be able to exercise certain legal rights under the Landlord & Tenants Acts. (See below for checklist.)

The procedures used by the Rent Assessment Panel are set out in a booklet called "Tenants' Associations" and in summary include the following:

- The rules of the association should be fair and democratic.
- Membership should be not less than 60% of those qualifying on the scheme.
- Members must be paying a variable service charge to the landlord.
- Tenants paying fixed rents/service charges will not qualify for membership (but, of course, could be involved in the process informally).
- Only one vote per flat or home will be permitted.
- No more than one association per block/building will be recognised, but more than one per scheme is acceptable for larger schemes with several blocks.

Documents required to be submitted before recognition are:

- A copy of the association's rules or constitution and elected officers.
- A list of subscribing members' names and addresses.

There is no charge for associations to apply to the Panel for recognition. A Panel will normally grant a certificate of recognition to an association for four years and the association can then apply again at the end of the period. Alternatively the Panel has the right to cancel recognition if it is no longer appropriate.

PROCEDURES FOR VOLUNTARY RECOGNITION OF RESIDENTS ASSOCIATIONS BY LANDLORDS

In the interests of building positive co-operation it is better for an agent on behalf of the landlord to recognise an association voluntarily, without insisting on applying

to the Panel. Agents should have a procedure for their clients' voluntary recognition and as a minimum adopt the same procedures published by the Panel as their own for granting recognition. Agents need to take instructions from their clients on their approach to resident associations.

MODEL RULES/CONSTITUTIONS FOR ASSOCIATIONS

One of the criteria for the recognition of a residents association is that the rules of the association should be fair and democratic. In order to comply with this criterion agents should ask but not insist all associations seeking recognition to use one of the model constitutions available. See references below for details of how to obtain copies.

- ARMA has drawn up the constitution in the attached appendix.
- The Federation of Private Residents Associations publishes a model constitution in its leaflet called 'Information Pack - setting up a residents' association'. The leaflet also contains specimen notices for the inaugural general meeting and a guide to conduct of committee business.

RECOGNITION FOR HOW LONG?

The Rent Assessment Panel will usually grant recognition for a period of four years. Agents promoting voluntary recognition should consider a different practice to counter some common issues with associations. Agents should require that any recognised association shall submit the following annually.

- Confirmation that an AGM and correct voting-in of officers has taken place.
- List of elected officers.
- List of members (signatures are not necessary but may be requested if required).

You should reserve the right to withdraw recognition if:

- Membership falls below 60% of lessees.
- The rules of the constitution are not followed.

Whatever practice you decide to adopt should be set out in writing when recognition is first given.

Recognition must be given by notice in writing BY THE LANDLORD to the secretary of the association. (S.29 of L&T Act 1985). So an agent needs the permission of the landlord to give approval.

WITHDRAWAL OF RECOGNITION

If a landlord has given recognition to an association then the landlord may withdraw it only by giving notice to the secretary of not less than six months. (S.29(2)) of the L & T Act 1985). The landlord via the agent will still have to consult during the notice period even if the association is no longer properly representative.

A Rent Assessment Panel may cancel a certificate at any time if it considers the association no longer merits recognition.

CHECKLIST OF LEGAL RIGHTS GIVEN TO RECOGNISED RESIDENTS ASSOCIATIONS

The secretary of an association can:

- Ask for a summary of service charge costs incurred;
- Inspect accounts and receipts for the property in relation to service charge costs;
- Ask to be consulted about the appointment or reappointment of a managing agent;
- Ask for a summary of insurance cover; and
- Appoint a surveyor to advise on any matter relating to service charges. The surveyor will have the right to see and copy supporting documents held by the landlord, to inspect common parts and to appoint assistants.

In addition, managers should serve copies of any notices required under Section 20 consultation arrangements upon the secretary of any recognised association whether recognised voluntarily by the manager or a Panel. Associations also have the right to nominate contractors and inspect any estimates/specifications.

WORKING WITH RECOGNISED ASSOCIATIONS

As well as legal rights, managers should offer arrangements for regular consultation with recognised associations.

- Encourage properly run associations where there are no resident management or right to manage companies.
- Have a policy and procedures for voluntary recognition. Do not insist associations have to seek recognition by the Rent Assessment Panel unless you have sufficient doubt about the way it has been set up.
- Require all associations to adopt one of the reputable model constitutions.
- Have a procedure for continuing recognition at regular intervals.
- Decide what regular consultation you will extend to recognised associations.

CONCLUSION

By taking the initiative and suggesting the formation of an association, the agent draws more people into the management process and will probably generate more positive feedback on day-to-day issues. It will also demonstrate a business style in tune with the themes of openness and accountability. An association helps the partnership between landlord/agent and lessee, eases communication and reduces the duplication of messages.

REFERENCES

L & T Act 1985 S.29 sets out recognition procedures and S.30B the right to be consulted about the role of an appointed managing agent.

- “Tenants' Associations” Booklet about how Panels recognise associations, free from Residential Property Tribunal Service Tel: 020 7446 7700 or download from:
http://www.rpts.gov.uk/pubs_and_forms/pdf/Booklet%205_TA5.pdf
- Part 17 of RICS Service Charge Residential Management Code is about residents associations.
- FPRA, the Federation of Private Residents' Associations, publishes an 'Information Pack' which contains information to help leaseholders set up an association including model rules. Purchase from
<http://www.fpra.org.uk/Public/Pages/Publications.htm>

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Whilst every effort has been made to ensure the accuracy of the information contained in this Guidance Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise. The Guidance Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore should seek independent advice.

APPENDIX

ARMA Model Rules/Constitution for Residents' Associations

WE, THE UNDERSIGNED, having resolved to form an Association to represent the interests of the leaseholders of the development known as (), on matters of common interests, have further resolved to adopt the rules of the Association annexed hereto which we have signed for identification purposes.

Dated.....

1.0 The Association shall be called () Residents' Association ('the Association')

OBJECTS

2.0 The objects of the Association are:

- 2.1 to represent the leaseholders on matters of common interest;
- 2.2 to consult with the lessor and/or its managing agent;
- 2.3 to preserve and improve, where required, the amenities enjoyed by leaseholders;
- 2.4 for the purpose of aforesaid, to employ solicitors, counsel, surveyors, engineers, accountants and other professional or qualified persons to advise the Association;
- 2.5 to do such other things, ancillary to the preceding objects, as may seem desirable to the Association.

MEMBERS

- 3.1 Any leaseholder may upon application and payment of the entrance fee become a full member. Only one vote per flat/house will be given in the case of joint leaseholders. A company that is a leaseholder of a flat/house shall be eligible for membership.
- 3.2 The committee may admit any other person as an honorary member.
- 3.3 In the rules the word "Member" shall, unless the context otherwise requires, mean a full member. Honorary members shall have neither rights nor obligations, except they shall have the right to attend and speak (but not vote) at any general meeting of the association.

COMMITTEE

- 4.1 The committee shall consist of not less than (...*optional but a minimum of 2..*) members who shall be elected by remaining members of the Association. At each annual general meeting (AGM) all committee members shall resign but shall be deemed to be re-elected (if willing to act) in absence of other nominees.
- 4.2 Unless the chairperson otherwise decides, no person shall be nominated for membership of the committee unless at least 7 days prior to the annual general meeting, written notice of such nominations shall be given to the secretary, save that existing members of the committee shall be deemed to be duly nominated.

OFFICERS

- 5.1 The committee shall elect a chairperson (who shall be chairperson of the Association and remain such until a new one shall be elected) and shall appoint a secretary and/or treasurer. (*These two roles may be combined.*)
- 5.2 The secretary shall keep and make available for inspection whenever requested to do so by a member:
 - A record of the business transacted at the AGM.
 - Copies of all written and notes of all oral communications with the landlord and/or agent and any replies received.
- 5.3 The Association in general meeting shall appoint two members (not being members of the committee) to act as auditors.

MEETINGS

- 6.1 The first AGM shall be held within 3 months of the end of the first financial year end.
- 6.2 Thereafter an AGM shall be held each year in the month ofand 14 days notice in writing of it shall be given to every member at his/her flat/house. A report shall be given at the AGM by the chairman indicating the Association's work over the past year.
- 6.3 Special general meetings shall be called on the requirement of the committee or of at least (*optional but a minimum of 10% is suggested*)% of members. At least 14 days notice in writing thereof shall be given to every member aforesaid. The notice shall indicate in general terms the principle business to be considered at the meeting.
- 6.4 At the AGM of the Association, or at any special general meeting, 25% of the membership shall constitute a quorum, and if not present, the meeting shall be adjourned to another day when members present shall form a quorum.
- 6.5 Seven days notice in writing must be given to the secretary of any resolution to be moved at the general meeting unless such resolution is admitted by the chair at the meeting.

(Appendix cont.....)

- 6.6 A notice containing all resolutions and nominations to be moved, with the names of those proposing and seconding each resolution or nomination, shall be kept by the secretary and be available for inspection by any member for seven days before the general meeting.
- 6.7 All members shall have the right (subject to control of the chairperson) to speak at any general meeting.
- 6.8 All members shall have the right to vote on any resolution before any general meeting.
- 6.9 Any member entitled to vote may demand a poll which shall be taken forthwith.
- 6.10 Any member entitled to vote may authorise in writing (such authority to be satisfactory to the chairperson) another member to vote on his behalf.
- 6.11 In the event of the equality of votes on any resolution the chairperson shall have the casting vote.

SUBSCRIPTIONS

- 7.1 Each person on applying to become a member of the Association shall pay an entrance fee. Until otherwise determined by Association in general meeting the entrance fee shall be £
- 7.2 Each member shall pay subscriptions in accordance with the resolution of the Association in general meeting.
- 7.3 The committee may expel any member who shall after 14 days notice, addressed to him and sent by post to or delivered at his/her apartment at.....(name of development), remains in default in paying any subscription.

FINANCE

- 8.1 The treasurer shall have control of funds of the Association and, save where required for immediate expenditure, he/she shall pay the same into a bank account or building society as directed by the committee.
- 8.2 The property and funds of the Association shall be held and administered by the committee and resolution of the committee shall be sufficient authority for any payments from the bank or building society accounts.
- 8.3 The committee is not authorised to incur any overdraft.
- 8.4 All cheques or requests for cheques or warrants shall be signed by the treasurer or secretary and one of the committee.
- 8.5 The financial year shall end onup to which date any annual statement of accounts and balance sheet be submitted for approval at the subsequent annual general meeting.

INDEMNITY

- 9.1 The members of the Association shall indemnify the officers of the Association and members of the committee against all liability incurred by them in good faith on behalf and in the name of the Association acting within their authority.

ALTERATION OF RULES

- 10.1 These rules may be varied or added to by resolution of the Association in general meeting, passed by a majority of at least two thirds of the members present in person or by proxy under rule 6.10, of which resolution notice shall be given in the notice convening the meeting.

COMPLAINTS

- 11.1 All complaints or suggestions on matters regarding the Association shall be made to the secretary, preferably in writing.

DISSOLUTION

- 12.1 The Association may be dissolved if the number of full members at any time falls below (...) and the committee so resolves, or if the Association in general meeting so resolves by a majority of at least two thirds of the members present in person or by proxy under rule 6.10 of which resolution notice shall be given in the notice convening the meeting.
- 12.2 On such dissolution any balance of the funds of the Association shall be distributed equally between the then members (who are not in arrears with their subscriptions) OR shall be paid to a suitable charity to be decided upon by a majority of the membership.

COMMITTEE

- 13.1 The members of the committee are:-
- Chairperson
- Secretary
- Treasurer
- Member
- Member.....
- Member.....