

Note: One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

SUMMARY

- In smaller blocks of flats, particularly those self-managed by lessees, lessees may want to take on gardening, cleaning work or other duties themselves.
- The immediate advantage of using such volunteers is one of keeping costs down.
- However, whether the volunteer is paid or not, unfortunately there are questions of legal liability, health and safety and insurance that need to be considered by the landlord and/or agent. These questions apply whether the landlord is a Resident Management Company, Right to Manage Company or not.

ADVANTAGE OF LESSEES CARRYING OUT DUTIES

- Lessees have a personal knowledge of and interest in the block.
- Lessees may not require payment and so keep service charge costs down.
- Lessees may be flexible and adjust to what is needed at a particular time, whereas an employee or contractor will want regular work.

SOME THINGS TO CONSIDER

1. Health and Safety

The Health and Safety Executive has issued guidance about the use of volunteers, even those unpaid.

“The Health and Safety at Work etc Act 1974 (HSW Act) is criminal law aimed at protecting employees and others who may be affected by work activities. It is enforced mainly by HSE and local authorities. Health and safety legislation does not, in general, impose duties upon someone who is not an employer, self-employed or an employee.

It is not possible to sue for damages under the HSW Act itself although a breach of health and safety regulations may be cited as part of a civil claim for compensation based on a breach of statutory duty.”

“Under the common law, voluntary organisations and individual volunteers have a duty of care to each other and others who may be affected by their activities. Where something goes wrong, individuals may, in some cases, sue for damages using the civil law if they are injured as a result of another person's negligence. But, for a negligence claim to succeed, the injured person must show that the defendant had a duty to take reasonable care towards them, and they have suffered the injury through a breach of that duty. The injured person must also show that the type of loss or injury for which damages are being claimed was a foreseeable result of the breach of the duty. “

2. Risk Assessments

It is wise to have a risk assessment carried out of the proposed task and record it in case there are any disputes or accidents.

3. Equipment

If the lessee will need equipment and materials to carry out the tasks, who will supply them?

For gardening work a mower and tools are usually required. If the landlord buys the equipment he/she is responsible for the safety and proper use of it. You need to train the volunteer in safe use of the equipment. If the landlord provides any cleaning materials and products, a check needs to be made as to whether any contain hazardous materials. If a ladder is provided then a record of it and regular safety checks should be made. Any tools and equipment supplied must be fit for

purpose and checked regularly. If power tools are used then you must carry out portable appliance tests on them.

4. Insurance

If there is an accident either to the volunteer or to another person caused by the volunteer when carrying out the work, who is liable and is there insurance cover? If a landlord agrees to let volunteers carry out cleaning, gardening or similar duties then there will normally be no public liability or personal accident insurance cover if a volunteer has any accident or causes any damage carrying out that work. In order to forestall any question of legal cases in an accident, the landlord should either take out additional insurance cover for the volunteer or insist upon and demand to see the insurance cover taken out by the volunteer at his/her cost.

5. Employee or Contractor

Whether a volunteer is paid or not the landlord/agent needs to consider what status the volunteer will hold. If things go wrong will the law regard him/her as an employee or contractor?

If payment is made then there is clearly a legal relationship and the landlord/agent should have a clear written agreement setting it out. One choice is to make the volunteer an employee. If this is done then there will be a requirement for a risk assessment of the tasks and questions of tax and insurance arise on any payments made. Also, if the employee is sick, there will be a liability for sickness payments.

If the choice is to make the lessee a contractor then the lessee will have to arrange his/her own insurance cover and submit invoices. As a contractor the volunteer will have more responsibility for their own safety and standard of work. However if a landlord or agent can see that work is being undertaken in a way that is not safe then there is a duty to intervene.

SOME DISADVANTAGES OF LESSEES CARRYING OUT DUTIES

- If problems arise over the standards of performance of the volunteers it can lead to difficulties. Criticism by neighbours of the volunteer can cause ill-feeling.
- Alternatively if the landlord or the agent has to criticise or sack a volunteer for poor performance, that can lead to a complete breakdown of that particular landlord/lessee relationship.

- If the volunteer becomes sick or goes on extended holiday then there is not immediate cover as one would have with a firm of contractors.
- Often an initial burst of enthusiasm to, say, attend to garden areas peters out and the standard of maintenance becomes unacceptable.
- Equipment bought for volunteers can soon become redundant if the volunteers stand down and no one wishes to volunteer.
- By using volunteers service charges are saved and kept low. If the volunteer arrangement falls through and a contractor has to be brought in, lessee's expectations of the service charge have been set low and suddenly increased costs can cause unrest.

FURTHER INFORMATION

Information from the Health and Safety Executive on volunteers can be found at:

<http://www.hse.gov.uk/voluntry/index.htm>.

Directors' responsibilities for health and safety-downloadable from

<http://www.hse.gov.uk/pubns/indg417.pdf>

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Association of Residential Managing Agents Limited (ARMA)
178 Battersea Park Road, London SW11 4ND
Tel: 020 7978 2607 Fax: 020 7498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

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