

**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.

### SECTION 20 CONSULTATION- WHAT IS IT?

Section 20 (S.20) is the number of a clause in the Landlord and Tenant Act 1985 (subsequently amended by a later Act). It is a clause to protect lessees. In summary it says that the individual lessee's contribution to the costs of major works will be capped if the landlord or its agent does not follow set consultation procedures first. S.20 severely limits the amount a landlord can charge for major works if the correct consultation procedure is not followed.

A landlord is defined for the purposes of S.20 to include Resident Management Companies (RMCos) and Right to Manage Companies (RTMCos).

### SUMMARY

- S.20 procedures apply to major works whether carried out by RMCos, RTMCos or other landlords/freeholders.
- The procedure is prescribed in detail in regulations issued by Government. Failure to follow the detail of the procedure can result in penalties.
- The penalty for failing to consult before commencing major works is limited to £250 per leaseholder the amount that can be recovered for those major works. This does not mean then every leaseholder can be billed £250 for works without consultation. Leaseholders can only be billed according to the proportions of total costs they are required to pay as set out in their leases.
- RMCos and other landlords that fail to consult lay themselves open to loss of income and claims for negligence.
- Consultation is required with lessees and any Recognised Tenants Association (RTA). (In this LAN "lessees" means lessee and any RTA.)

### WHAT IS THE PRESCRIBED PROCEDURE?

The procedure is required if the contribution towards the works by any one leaseholder is estimated to, or does, exceed £250. When calculating the estimated cost include VAT and any fees of consultants used.

- **Stage 1:** the Notice of Intention. A notice setting out what works are proposed, why they need doing, inviting comments from lessees, and inviting nominations of contractors from lessees.
- **Stage 2:** the Statement of Estimates. Once estimates for the works are obtained a notice to all lessees about the costs, how to inspect the estimates and inviting any comments.
- **Stage 3:** the Notice of Reasons. Once the contract is awarded this notice must be sent if the landlord does not choose the cheapest estimate or a contractor nominated by lessees. It must explain why the landlord chose that particular estimate.

### WHY DOES S.20 TAKE SO LONG?

For stages one and two lessees must be given at least 30 days to reply with any comments. So even if an agent can obtain estimates quickly it will take at least 2 and probably 3 months as a minimum. Indeed, agents are advised to allow slightly more than 30 days for comments because of delays in post being received by lessees after mailing.

### SURELY S.20 DOES NOT APPLY TO RMCOS and RTMCOS?

*"Surely there is no need for resident management companies where each lessee is a member of the company to comply with S.20? We discuss the issues and costs between us anyhow and everyone knows."*

No, this is wrong. S.20 consultation applies to all landlords and all resident management companies, whether they are landlords or not. If the RMCo or RTMCo is the body responsible for committing the service charges for major works, it is subject to S.20 rules.

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#### WHAT IF WE DECIDE ON WORKS AT AN AGM?

Even if a unanimous decision to go ahead with works is made at the AGM of an RMCo or RTMCo, S.20 consultation is still required by law. Decisions taken by shareholders, members or directors of a company do not mean that landlord and tenant law or S20 can be ignored.

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#### WHAT ARE THE PENALTIES IF WE FAIL TO CONSULT?

The penalty is that the sums lessees can be made to pay for the major works will be limited. The limit is £250 per leaseholder (joint lessees count as one).

So if an RMCo of a block of 8 flats spent £5,000 on major works and failed to consult; then if the lessees refused to pay, the maximum they can be made to pay in law is 8 x £250 each = £2000. Who would have to find the rest if there was a problem? Well, very possibly, the directors of the RMCo would be liable because they were negligent in failing to follow S.20 procedures.

You may argue “surely in our block we all know each other and there will be no arguments.” Yes, but what if a flat is sold whilst works are in progress, or the contractor upsets lessees and fails to do a good job. There will be arguments and lessees may well refuse to pay.

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#### CAN TRIBUNALS DISPENSE WITH S.20 RULES?

Yes, Leasehold Valuation Tribunals (LVTs) can dispense with S.20 rules either before or after major works have been carried out; but only if a very good case can be made. LVTs have only considered dispensation generally where there was an emergency and works had to be started at once or for urgent health and safety reasons.

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#### WILL TRIBUNALS ALLOW FOR MISTAKES?

In general LVTs have interpreted S.20 rules strictly. Failure to consult may not be justified by an honest mistake or compliance with the 'spirit' of S.20. The legislation makes no distinction between the professional landlord and the small block self-managed by the lessees.

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#### FURTHER INFORMATION

- S.20 of the Landlord and Tenant Act 1985. As amended by the Commonhold and Leasehold Reform Act (CLRA) 2002.
- The Service Charges (Consultation Requirements) (England) Regulations 2003. SI2003/1987.
- The Service Charges (Consultation Requirements) (Wales) Regulations 2004. SI2004/684.

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