

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

- Lessees who are unhappy with the management of their blocks have several options to change things.
- The appointment of a manager by a Leasehold Valuation Tribunal (LVT) is one option but is normally an option of last resort..
- The appointment may only be granted if a lessee or group of lessees can prove fault with the current management.
- Appointment of a manager is a good alternative where a majority of lessees will not support the Right to Manage, because it can be sought by just one lessee in a block.

WHAT IF YOU ARE UNHAPPY WITH THE WAY YOUR BLOCK IS MANAGED

There are several options you could consider before thinking about the appointment of a manager by an LVT which will involve proving fault and the time and cost of going to the Tribunal.

Who is at fault-the landlord, the agent or your resident management company?

If your managing agent is at fault complain to the agent first. ARMA members must give you the right to complain to an independent ombudsman.

If there is a resident management company for your block then complain to the directors. The directors can remove an agent that they have appointed.

Consider the right to manage if there is not a residents' management company at your block. This requires at least 50% of lessees to support and will cost some money, but it does not involve having to prove fault with the current landlord/ agent before an LVT.

An LVT appointed Manager by Order is a last resort method of dealing with bad management. If complaining to your landlord, complaining to the directors of the residents' management company, using the existing managing agents' complaints handling procedure has all failed to resolve the management problems, and if those problems are sufficiently severe, then one or more lessees may decide that the only alternative is now to apply to the LVT for the appointment of a manager.

DO I QUALIFY FOR SEEKING THE APPOINTMENT OF A MANAGER?

Your block must contain at least two flats. Leasehold houses cannot use this right.

The right to seek the appointment of a manager from the LVT is not available where the landlord is;

- a local authority,
- the Commission for New Towns,
- an urban development corporation,
- the Housing Corporation,
- a registered housing association,
- a fully mutual housing association or a charitable housing trust.
- resident on the premises and it is a converted (not purpose-built) property and less than half the flats are let on long leases.

You need to be a long leaseholder to apply, which is with a lease which was originally granted for a period in excess of 21 years.

GETTING STARTED

Do seek some advice before you start.

- You can get a useful booklet and an application form from the Residential Property Tribunal Service.

- The Leasehold Advisory Service has good information on the topic on its website.
- Because you will have to prove fault at an LVT you may find you need a solicitor.
- You will need to nominate to the LVT the alternative manager you wish the LVT to appoint. You can search the ARMA website for managing agents in your area that may be willing to assist you.

WHAT WILL I NEED TO PROVE BEFORE THE LVT?

The law on this matter is in S24 of the Landlord and Tenant Act 1987.

Any lessee of a flat (but not of a house) has the right to apply to the LVT for the appointment of a manager if unhappy with the current one. When considering whether to appoint a manager the LVT will decide whether it is satisfied that:

- 1) The landlord or current manager is in breach of his obligations to a leaseholder under the lease which relates to the management of the premises or part of the premises; or
- 2) Unreasonable service charges have been made or are proposed or likely to be made; or
- 3) The landlord or manager is in breach of any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the 1993 Act ; or
- 4) The landlord or manager has failed to comply with S.42 of the L & T Act 1987 with regard to holding service charge monies in trust; and
- 5) Other circumstances exist in which it is just and convenient for the order to be made.

Leaseholders need only prove one of the above grounds. However, if they intend to prove grounds on 1, 2, 3, or 4 they must also satisfy ground 5 to the LVT that it is just and convenient in the circumstances to make an order to appoint a new manager.

The relevant codes of practice are the RICS Service Charge Residential Management Code or the Association of Retirement Housing Managers' code of practice for retirement leasehold blocks.

THE S22 NOTICE

If you still wish to go ahead there is one thing you must do before you apply to the LVT. You must serve a S22 notice on the landlord-not the managing agent. There is no prescribed form but some prescribed content.

The notice must state the faults of the current management. So there should be one or more of the matters which an LVT can consider namely:

- 1) The landlord or current manager is in breach of his obligations to a leaseholder under the lease which relates to the management of the premises or part of the premises; or
- 2) Unreasonable service charges have been made or are proposed or likely to be made; or
- 3) The landlord or manager is in breach of any relevant provision of a code of practice approved by the Secretary of State under Section 87 of the 1993 Act ; or
- 4) The landlord or manager has failed to comply with S.42 of the L & T Act 1987 with regard to holding service charge monies in trust; and
- 5) Other circumstances exist in which it is just and convenient for the order to be made.

If the faults you list are capable of remedy then you must give the landlord reasonable time to remedy the situation. What constitutes a reasonable time depends on what the issues are.

Once the reasonable time has expired, if you are not satisfied that the faults have been remedied, then make an application to the Leasehold Valuation Tribunal (LVT) for a manager to be appointed. You will have to nominate a new manager.

THE PROCESS

1. The LVT application form is straightforward and not difficult to complete. See below how to get a form.
2. You will be required to attend a pre-trial-review to set down time limits for the various steps to be taken prior to the hearing of your application, and a hearing date will be set.
3. You will need to provide a statement of case which will expand on the faults set out in the S22 notice and the application giving the reasons and evidence on which you rely for claiming these faults.
4. The landlord or RMCo, if they resist your application (not all of them do), will provide a statement of case in reply setting out why they resist.
5. You will need to nominate a competent manager who will have to be interviewed by the Tribunal, will have to produce a management plan, evidence of his professional indemnity insurance policy (in case he makes mistakes and has to be sued) and you will have to provide a draft Management Order (for which you will probably need legal advice).

6. You will have to produce a bundle of all the documents which the Tribunal will need to consider your application, and on which they will direct you at the pre-trial-review, to arrive at the Tribunal a week or so before the hearing.

SOURCES OF INFORMATION

- The Leasehold Advisory Service. Ring 020 7383 9800 or use the following link: <http://www.lease-advice.org/information/faqs/faq.asp?item=111>
- The Tribunal Service for a leaflet and application form. Use this link: <http://www.justice.gov.uk/downloads/guidance/courtandtribunals/tribunals/residentialproperty/leasehold-valuation-tribunals.pdf>
- The ARMA website for a list of agents who may be nominated as a manager by you. http://www.arma.org.uk/public/members_search.cfm

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