

# A GUIDE TO THE MANAGEMENT OF MIXED-TENURE DEVELOPMENTS



*in association with*

**NATIONAL  
HOUSING  
FEDERATION**



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## INTRODUCTION

New developments of leasehold flats have become complex to set up and manage as commercial units and affordable housing are more and more being integrated into schemes.

To assist developers, property managers and housing associations in dealing with the issues that arise from mixed-use and mixed-tenure, the Association of Residential Managing Agents has collaborated with the National Housing Federation to produce this guide.

## CONTENTS

## Page No

1.	<b>SUMMARY</b> .....	1
2.	<b>MODELS OF MANAGEMENT</b> .....	1
2.1	Commonhold.....	2
2.2	Commercial Units.....	2
3.	<b>THE LEGAL FRAMEWORK FOR SOCIAL HOUSING UNITS</b> .....	3
3.1	Head Leases.....	3
3.2	Individual Leases.....	3
3.3	Freeholds.....	4
3.4	Freehold Transfer Documents.....	5
4.	<b>NEW SCHEME HANDOVERS</b> .....	5
4.1	Initial Service Charges Budgets.....	6
4.2	Reserve Funds.....	6
4.3	Void Service Charges.....	7
4.4	Payment Periods for Service Charges and Ground Rents.....	7
4.5	Management after Handover.....	8
5.	<b>CHALLENGING SERVICE CHARGES</b> .....	8
6.	<b>PRESENTATION OF SERVICE CHARGE ACCOUNTS</b> .....	9
7.	<b>MAJOR EXPENDITURE: S.20 CONSULTATION ISSUES</b> .....	9
7.1	Other charges.....	10
7.2	Administration Charges.....	10
8.	<b>RESIDENT INVOLVEMENT AND CONSULTATION</b> .....	11
9.	<b>THE MANAGING AGENT'S ROLE</b> .....	12
10.	<b>LETTINGS ISSUES</b> .....	12
11.	<b>COMBINED HEAT AND POWER (CHP)</b> .....	14
12.	<b>CONCLUSION</b> .....	15
	<b>LEXICON AND FURTHER INFORMATION</b> .....	15

# THE MANAGEMENT OF MIXED - TENURE DEVELOPMENTS

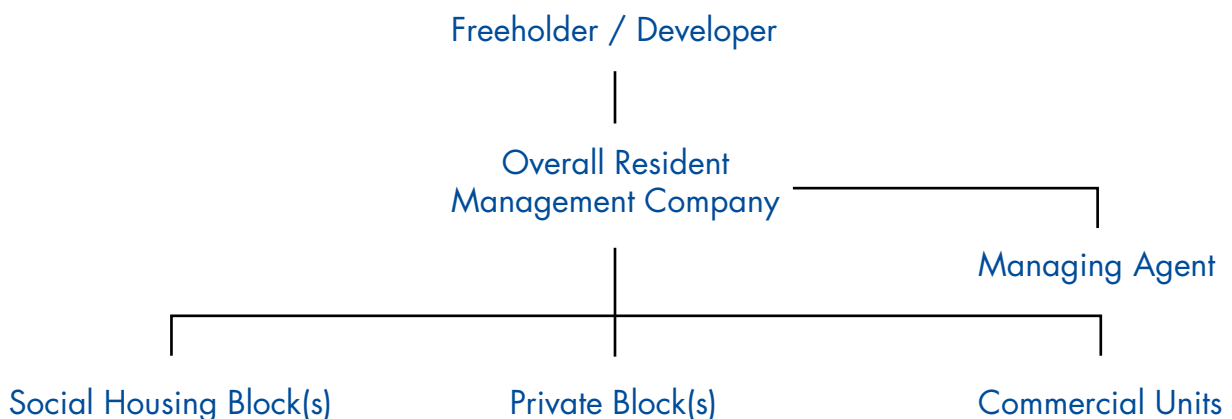
## 1. SUMMARY

- This Guide is about the management models used and the issues arising for mixed - tenure developments.
- By 'mixed - tenure' is meant developments of one or more blocks of flats with social or affordable housing alongside private leasehold flats. Many such developments will also contain commercial units and possibly freehold houses.
- It is essential that the developer(s) of these schemes involve a managing agent and the partner(s) for the social housing at as early a stage as possible so that long term sustainable management arrangements can be set up.
- There has been concern about the management of such developments, in particular about lettings. This Guide seeks to explain some of the issues that arise on such developments.
- It is important that arrangements for information exchange, billing and management meetings are agreed between managing agents and housing association landlords and subsequently maintained.

## 2. MODELS OF MANAGEMENT

*The housing associations and managing agents should be invited at an early stage by the developer of the scheme to be involved in estate design planning. Meetings at this stage can look at design issues for communal services, what will be the best management arrangements to put in place, the split of communal space as against demised premises, ways in which the service charges for the social housing can be made as affordable as possible, the drafting of leases and/or freehold documents to ensure that there is a correct description, apportionment and recovery of service and estate management charges.*

The most frequently used model on mixed - tenure developments is:



In this model the freeholder/developer grants three party leases to the leaseholders in the private blocks. These leases establish a resident management company (RMCo) as the overall body to manage the development. All private leaseholders will become shareholders or members of the company when they purchase. During the development phase the developer will appoint the initial directors and may seek to retain this level of control until all sales are completed.

The developer will also appoint a managing agent for the development. The agent will, of course, be contracted to the RMCo but the initial choice will be with the developer. The agent can be either a private company or a housing association. The length of the initial contract will be the subject of negotiation bearing in mind the requirements of s.20 consultation rules, as will the timing of handover of estate management responsibilities.

The freeholder/developer will retain a position as backstop for management if things go wrong with the RMCo. This is a requirement of the Council of Mortgage Lenders.

There are variations on this model. The overall management company named in the lease can be a managing agent or housing association. The freeholder/developer may sell a head lease to an investor rather than use an RMCo, indeed the RMCo may acquire a headlease or even the freehold.

Particularly where the development involves family housing and communal facilities being developed over many years, the likelihood of anti-social behaviour and vandalism can be lessened by involving those responsible for the future management of the estate (private managing agents and housing associations together with local residents if the scheme is a redevelopment) at an early stage of the estate planning.

## **2.1 Commonhold**

Commonhold is an alternative form of tenure to leasehold for the ownership and management of interdependent buildings which share facilities, such as blocks of flats and office blocks. Each owner of a unit, such as a flat, house or office, has outright freehold ownership of the unit coupled with membership of a Commonhold Association which owns and manages the common parts of the development.

Commonhold has not been taken up on any scale at this time: the limitations on the tenure as enacted make it difficult to use for multi-tenure and multi-building developments.

## **2.2 Commercial Units**

The developer will wish to let the commercial units and will often use a quite different agent to do this. The commercial units will pay a service charge for any estate or block costs they incur. Particularly if there are residential units above the commercial premises, it is important for all parties to be aware of any relevant restrictions in the commercial leases such as the times allowed for commercial delivery and use of parking and refuse bins and the arrangements for reporting any breaches.

## 3. THE LEGAL FRAMEWORK FOR SOCIAL HOUSING UNITS

For the social housing units, housing associations have used three main frameworks: head leases, individual leases and freeholds. There are pros and cons for the different parties for each one.

### 3.1 Head Leases

These can be used for a separate block or even part of a block. (There can be a head lease, even if the units are peppercotted, by listing unit numbers.)

- For the freeholder/developer it reduces the legal costs of drawing up separate leases for every unit. Where a shared ownership sub-lease is going to be issued out of the head lease, it is crucial that accurate conveyancing plans are issued by the developer for each unit, otherwise the titles of the subleases will not be able to be registered by the Land Registry.
- For the Housing Association (HA):-
  - The housing association will want to ensure the head lease is not a commercial lease to allow it to challenge the estate costs under Landlord and Tenant legislation.
  - It may give greater control of the management of a particular block if the housing association can set and control the service charges of that block.
  - The housing association may receive one invoice for estate costs rather than having to pay separate invoices for every unit it owns. Or the agent for the RMCo may issue individual invoices for each unit based on apportionment, for example, by floor area.
  - There may be separate invoices payable for ground rents, often to a different agent acting on behalf of the freeholder. The HA will need to check that ground rents are not unreasonably high either initially or on subsequent increases under the proposed lease.
  - The housing association will have to serve s.20 notices on its tenants/ leaseholders for all qualifying works and agreements.
- For the RMCo and its agent:-
  - There may be a lot fewer invoices for service charges to be sent out.
  - But the RMCo will have to serve s.20 notices on the head lessor for any works over £250 and for long term agreements over £100 per annum. See s.20 issues below.

### 3.2 Individual Leases

If individual leases are granted to the housing association for each unit bought by it, then it becomes a head leaseholder and issues shared ownership sub-leases or assured tenancies.

- For the RMCo and its agent there are a lot more invoices for service charges and ground rent to issue; fewer items may require s.20 notices but the RMCo is responsible for issuing s.20 notices to every leaseholder on the estate, not just the private ones.
- For the HA it has to handle multiple service charge invoices, one for every unit. It has no direct control over the setting of the service charges it has to pay to the RMCo (see issues about RMCos below) but it can challenge the charges at an LVT as any leaseholder can.
- If the block is shared ownership then the HA can step back from management when the leaseholders staircase to 100%.
- If social housing is pepperpotted this may be the obvious choice available.

### 3.3 Freeholds

If all the social housing units are in a separate block or blocks or houses then the developer can sell the freehold to the housing association.

- For the freeholder/developer it may mean a better sale value than a head lease.
- For the HA:-
  - It will have fuller control of the management and the setting of the service charge for the block(s).
  - It buys out any ground rents the freeholder might have wished to levy, potentially making the costs more affordable for residents. This may be offset by a marginal increase in price for units sold and the capital cost to the HA may be higher. It also gives the option to the housing association to levy a ground rent if a full leasehold interest is bought by a resident under shared ownership, Right to Acquire or Social Homebuy.
  - It will have to negotiate what services and charges it wishes to pay to the RMCo for the 'estate' costs.
  - As a freeholder it will have no statutory legal rights to challenge the reasonableness of estate charges levied by the RMCo.
  - It will have responsibilities for s.20 consultation for estate charges to its lessees and tenants but have no right to be consulted in the same way by the RMCo.
  - It can grant leases or tenancies for the block in its usual form subject to the inclusion of any estate specific covenants that must be included.
  - It can choose the basis on which to split the block costs, either simply by the number of units or by some form of apportionment based on number of bedrooms or floor area.
- For the RMCo/agent:-
  - It can levy one invoice for estate charges on the freeholder of the block.
  - It has no liability to consult the freeholder under s.20.

### 3.4 Freehold Transfer Documents

Because freeholds are not subject to the landlord and tenant laws that set some minimum standards for leaseholds, it is essential that great care is taken to set out in the transfer documents the arrangements for the payment of estate or service charges by freeholders. (These charges are in law called rentcharges).

The documents should include most of what one would expect to see in a lease about service charges:-

- A schedule of the items that will be charged to the freehold properties. The apportionments that will be used plus some flexibility to adjust it if required.
- A procedure for annual accounting and whether owners will be sent copies of those accounts.
- A statement about payment periods and methods.
- What will happen to surpluses and deficits.
- Whether reserve funds can be collected.

## 4. NEW SCHEME HANDOVERS

Site inductions by the developer for those who will be involved in scheme management and for those nominating tenants should ideally be planned from six months prior to first completions. Estimates for service charges payable by the various tenures should be able to be produced by this time.

An issue for housing associations is that the mandatory clauses of shared ownership leases require the specified proportion of service charges to be stated. On mixed tenure estates, usually, block costs are based on floor area and estate charges split equally among all the units on the estate. However, as the number of units may well change as the stages in the scheme are completed, allowing some flexibility in the alteration of apportionments is recommended in all leases granted. The wording of the shared ownership lease needs to reflect this. There also may be some charges that are not made to all properties e.g. for access to private gym facilities or parking spaces. Those involved in marketing shared equity products and lettings should have a good knowledge of the costs likely to be incurred in living on the estate.

New private owners should be given a handover pack that not only includes information on the property such as the operation of the heating systems and location of stopcocks, but also confirms how and when the managing agent can be contacted and any estate specific requirements regarding parking enforcement, refuse and recycling arrangements etc. It should also have information about any RMCo set up on the estate and any requirements to obtain the RMCo's consent needed to sell or charge a property.

Housing association residents should also have an information pack supplied by the association (or a combined version) and this should include estate specific information, including responsibilities and contact details of any managing agent and how to report defects both within their flat and in any communal areas. Note that managing agents are not normally responsible for reporting defects to the developer; that is not a contractual obligation for most managing agents. Private leaseholders will be expected to report their defects direct to the developer. Housing association tenants should also be clearly advised whether they will have the right to buy their property under any of the purchase schemes such as Right to Acquire or Social Homebuy.

#### **4.1 Initial Service Charges Budgets**

The managing agent for the RMCo may provide the initial advice on setting service charges to the developer. It is a breach of the Consumer Protection Act 1987 to give artificially low forecasts of service charges.

The agent will wish to ensure that there can be 100% recovery of all elements of service and full disclosure by the developer of plans or possible changes of plan is necessary.

Housing associations will be under pressure to keep service charges down to keep them 'affordable' to their tenants and leaseholders. Local authorities can also seek to influence the level of service charges to comply with their views on affordability. There is sometimes a limit placed on service charges by a local authority under a s.106 agreement, both initially and for subsequent reviews. In such cases it is important to check exactly which elements in the charges are included in this limit. This restriction if applied without thought may result in a future challenge by private leaseholders to a Leasehold Valuation Tribunal if they are charged a higher contribution to make up the shortfall against expenditure because of caps agreed for social housing service charges.

An alternative that may be negotiated by the local authority is for the developer to place an initial 'dowry' in the reserve fund so that the shortfall is met from that rather than by other leaseholders on the estate. This arrangement also needs thought about the long term effect. Local authorities may also be able to restrict the ground rents that can be charged under a s.106, which will have no effect on those charges to full owners.

The best practice is quite clear. High density mixed - tenure schemes require high levels of service and management to prosper. It is not reasonable for a local authority or housing association to expect private residents to subsidise estate services for the social housing ones; cheaper services and management will not work in the long term.

#### **4.2 Reserve Funds**

The advice of both the RICS residential service charges code and Housing Corporation advice is to set up reserve funds. However there are considerations of the affordability of service charges for first-time buyers and the burdens on developers. Ideally, a life cycle costing of the development as built should be available to indicate the expected replacement date for components and the recommended redecoration intervals.

If a decision to defer or phase any contributions to reserves is taken then it should only be carried out with full transparency to all buyers and leaseholders. Good practice would be to consult with leaseholders after all units are sold to agree the level of reserve fund contributions and whether the level should be set to cover only planned cyclical expenditure or full lifecycle replacement. If funds for cyclical decorations are postponed in early years there will then be a major rise in service charges to fund the redecorations and this should be made clear to buyers.

The Housing Corporation's Capital Funding Guide does require reserves for components: it is mandatory for external decorations in the shared ownership model lease. If, therefore, there is no such provision in the budget produced, the HA will have to decide whether to collect and hold a reserve fund contribution from its shared owners.

### **4.3 Void Service Charges**

Once the first dwelling in a block is sold there will usually be a liability to pay service charges for the unsold properties in the same block - to pay "voids". Managing agents should expect developers to pay voids and seek clear provisions in the leases and any agency agreements for such payments.

Housing associations should also budget for void payments from the date they take handover of any dwellings until the date they sell or let them and check that void payments are shown in the service charges accounts until all units are sold.

### **4.4 Payment Periods for Service Charges and Ground Rents**

Payment of ground rent and service charges to private landlords is normally annually, half yearly or quarterly in advance. Service charge funds are 'trust' funds and should never run in deficit, so agents will want funds paid in advance to provide cash flow. The usual example is the annual insurance premium payable in advance.

Housing associations often allow leaseholders and tenants to pay service charges monthly in advance. But if the housing association is the freeholder, head lessor or leaseholder of any units it will be bound by the payment periods set in the legal document it has signed with the developer/RMCo. So housing associations need to budget for the requirement to fund service charges and any ground rents due from them to the RMCo.

An option to consider for shared ownership sales is to collect the quarterly/half yearly service charge payment as per the lease on completion of the initial sale, with the shared owner then making monthly payments to the HA (or direct to the managing agent if appropriate) so that the full payment has been accumulated by the time of the next demand. This approach can also be taken for ground rents.

If there is a requirement for the housing association to pay a ground rent to the landlord for its social housing units then it may wish to change the terms of its usual leases for shared owners to allow for recovery of those ground rents.

## 4.5 Management after Handover

The housing association and the agent should plan to make frequent estate visits to meet together to ensure that any early problems with the building or behaviour of residents are dealt with promptly. The housing association will also need to decide whether to nominate one of its officers as a director of any residents management company and how it can encourage its residents to get involved, which may include providing appropriate training. If there are estate communal facilities it is also important that residents are involved in any choices in how these are operated.

Once the estate is running smoothly, the housing association may no longer visit and is likely to charge a reduced management fee to its tenants on the basis that local management is undertaken by the managing agent.

Arrangements between managing agents and housing associations should be made on information sharing and how any requirements within the head lease (e.g. to advise when a shared owner has acquired a 100% interest or if a property is to be re-possessed) should be notified in practice.

## 5. CHALLENGING SERVICE CHARGES

The private leaseholders can challenge any service charge levied by the RMCo at an LVT whether they are members of the RMCo or not.

A housing association as head lessor can challenge the estate service charges levied by the RMCo. It will be perceived to have a 'Duty of Care' to check the service charge demands before passing them on to its tenants and leaseholders, and raise any query with the managing agent or freeholder as necessary. If unresolved, the dispute may need to be referred to a Leasehold Valuation Tribunal (LVT).

The leaseholders of the housing association which is a headlessor can challenge the service charges of the housing association at an LVT. In addition the courts have also established (*Oakfern v Ruddy*) that an individual tenant or leaseholder of a head lessor has the right to challenge the service charge levied by the RMCo at an LVT in the model used here.

If the housing association has bought the freehold of a block and then sold leases of units, the association's leaseholders can challenge any service or estate charges levied by housing association. But the housing association as a freeholder will have no similar rights under landlord and tenant legislation to challenge estate charges levied by the RMCo.

Freeholders of individual houses on mixed - tenure developments also have no rights to challenge service charges using LVTs or Landlord & Tenant legislation. They may have a right to enforce the terms of their freehold contract in a county court but there may be no presumption of reasonableness implied.

## 6. PRESENTATION OF SERVICE CHARGE ACCOUNTS

New legislation (expected in 2009) will require private landlords (including RMCos) to provide statements of account for service charges with certain prescribed contents including a balancing statement and an accountant's report for leasehold properties. Housing associations will also have to comply but probably not in the same way.

So the RMCo may account for estate charges in a different form than that used by the housing association for its service charges. Housing associations will have to choose how best to account to their leaseholders for the estate charges where they are freeholders or head lessors, because it is they who have the obligation to provide the statement of accounts.

Note that these requirements will not apply to individual freehold properties and there will be no obligation to produce statement of accounts unless it is expressly set out in the freehold transfer documents.

## 7. MAJOR EXPENDITURE: S.20 CONSULTATION ISSUES

If head leases are used then there may be concern about which party should be serving s.20 notices.

If the RMCo proposes a long term agreement or qualifying works it will be responsible for serving s.20 notices on its leaseholders. The Court of Appeal case of *Oakfern v Ruddy* (2006 EWCA Civ 1389) established that a head lessor is in the position to have the protection of L&T legislation re service charges even though that head lessor may be the tenant of more than one dwelling in a building. So in this case, for the RMCo, its leaseholders include any head lessor. A consequence of this is that if head leases are used the RMCo and its agent will find that the qualifying works limit for the head lessor is £250, even though the head lessor may be of a block of say 25 flats. The limit for the RMCo in this situation is not 25 x £250.

If the HA as head lessor decides to enter into a long term agreement or qualifying works on its separate block(s) only, then the HA will have to serve s.20 notices on its tenants and/or leaseholders. S.20 applies to any tenant paying a variable service charge with the exception of tenants of local authorities on secure tenancies. So assured and secure tenants of housing associations as well as leaseholders may have to be consulted if the cost concerned is being paid for from the service charge.

So far it has been clear which party must serve s.20 notices. What has not always been clear is if the RMCo serves a s.20 notice on a head lessor, who is responsible for serving notices, if required, on the leaseholders and tenants of the head lessor? The obligation will only arise where the sum in the s.20 notice served by the RMCo is more than £250 for any one leaseholder and/or tenant in the block managed by the head lessor for major works, or £100 for long term agreements.

Oakfern v Ruddy in the Court of Appeal established that in this situation the leaseholders and tenants of the housing association have the right to challenge the service charges levied by the RMCo, if for some reason the housing association did not wish to do so. So if s.20 notices are not served correctly upon the housing association's lessees and tenants there could be problems of recovery for both the RMCo and the housing association. These situations demand good working relationships between the agent of the RMCo and the housing association to decide who is in the best position to serve s.20 notices and to ensure the timescales are kept to. If emergency works are required there will be even greater need for cooperation. For housing associations with rented tenants then the need to consult will require a decision on whether fixed or variable service charges are used, and whether the items in the notice are recoverable from service charge or rent.

## **7.1 Other Charges**

Where there are communal meters for water or heating charges, these charges will need to be separately identified by housing associations as these are not eligible for housing benefit.

## **7.2 Administration Charges**

The RMCo or its agent should as a matter of good practice issue a menu of administration charges which may be levied on leaseholders. A copy should be provided to the housing association(s) at the scheme also, because they may wish to seek recovery of those charges from their leaseholders and tenants.

Charges will be imposed by the RMCo for late payment of service charges or when solicitors are instructed to recover arrears, which may differ from the housing association's own procedures. The housing association would usually seek to recover any such costs from only the lessee or tenant concerned. However, it may decide to pay the charges due to the managing agent on time to avoid the late payment charges being incurred and recover the payment over an agreed period from the lessees concerned to make the charges more affordable.

If an association's leaseholders are paying service charges direct to a managing agent, procedures should be in place for the association to be notified if a leaseholder falls into arrears above an agreed amount. It is recommended that the managing agent serves copies of any notice for the social housing units on the housing association at its registered offices. If a leaseholder falls into mortgage arrears and the property is repossessed, the managing agent should be advised as soon as possible.

Charges levied for items such as additional access keys, parking permits etc should also be clearly advised to all parties.

Consent from the RMCo may be required before a property can be sold or a new charge raised against it and all owners should be advised how such consent can be obtained and the likely costs and expected timescale.

## 8. RESIDENT INVOLVEMENT AND CONSULTATION

It is common for there to be a resident management company as the overall company for the estate. Such RMCos should provide the most democratic long term management solution. There are, however, a number of issues that can arise and decisions need to be taken on the most appropriate arrangements for the development. The developer will usually set up the RMCo, appoint the initial directors and ensure those directors retain control during the sales period. This may not be appropriate for large mixed-tenure schemes. Here are some of the issues:-

- Developers need to rethink their traditional approach to plan how to achieve the best form of resident involvement in the longer term.
- Housing associations are required to provide methods of participation and involvement for their residents. Traditional approaches by developers may frustrate housing associations.
- If head leases are used for social housing blocks what level of representation in the company is to be given to the housing associations? If one share is given as one lessor the housing association will feel it has little say in the affairs on the estate.
- If the housing association is given, for example, 25% of the shares to reflect the number of units it owns, then other lessees may feel their views will be outvoted at meetings of the RMCo (which are rarely attended by the majority of lessees) if the housing association exercises a block vote.
- If shares in the RMCo are given to the housing association what involvement can the housing association's long leaseholders and tenants have in the running of the RMCo? Shared ownership leaseholders of a housing association with a 99 year lease have a significant stake in the estate. How can they be involved in the RMCo? Can they have a proxy vote?
- If the housing association is given shares in proportion to its units, but then seeks to devolve those shares in some way to its residents, it may find it has no effective voice in the way the development is run.
- If service charges for social housing residents are limited in some way as part of a s.106 agreement they risk being excluded from discussions over estate expenditure options on the basis that they are not fairly contributing to the costs
- If 50% of the units on the estate are affordable housing and the housing association(s) is given votes to reflect the units, it will have control of the RMCo which may not please the private leaseholders or the developer.
- Even if the housing association is not given votes as per units, it could launch a Right to Manage bid, if it qualifies, to oust the RMCo at any time if it has individual leases of the social housing properties.

- The possibility of the housing association having directorships of the RMCo should be explored.

It is essential that the developer, the proposed managing agent and the housing association(s) for the scheme all meet before setting up the RMCo to discuss what form of RMCo is most appropriate. (Or if no RMCo is to be used what is the best way to plan for the future management of the development). Any agreement will need to be reflected in the articles of the RMCo. A role should be created for the housing association in the future management of the scheme.

## 9. THE MANAGING AGENT'S ROLE

In the model of management used the RMCo contracts with a managing agent and in practice it is the developer who makes the initial appointment for a set term. In this model the agent's only client is the RMCo (probably controlled initially by the developer) and it will contract to provide certain services according to the terms of any freeholds, head leases and leases granted by the freeholder or RMCo.

If it holds the freehold, individual leases or head lease of a block or blocks, the housing association will have a contract with the RMCo. It has no direct contract with the agent for those services. Neither does the agent have any contract to provide services of any kind to the leaseholders or tenants of the housing association. They are sub-tenants of the housing association and they will look to the housing association for any queries on the services provided.

The housing association may decide that it wishes to sub-contract the services it will provide to its leaseholders and tenants. If so the housing association can negotiate a separate management agreement for these services, and it may be appropriate to use the same agent for the whole scheme. However, the association should try and ensure that any management agreement negotiated in such circumstances is for the same period as the main agreement so that a change of agent for the main scheme does not leave the association's properties vulnerable to not receiving services.

## 10. LETTINGS ISSUES

Concern has been expressed that too large a proportion of properties being sublet on mixed tenure estates can cause management problems. Obviously the housing association responsible for social housing is the most prominent buy-to-let investor, but the concern has been about the proportion of buy-to-lets amongst private leaseholders.

There have been isolated allegations of anti-social behaviour by tenants of private buy-to-lets as well as by social housing tenants. If few leaseholders are resident there could be a lack of responsible ownership and involvement on the estate and that could lead to too small a pool of resident leaseholders being available to become involved in the running of the RMCo. There is also some evidence that more professional buy-to-let landlords take a long term view of their investment and can be active in the RMCo in order to maintain the value of their investment and ease of letting.

Other problems can be caused if the owner's address is not known by the managing agent and service charges are not paid when due, resulting in the worst cases by services not being able to be maintained to the estate as contractors cannot be paid.

There are a number of methods that can be used to prevent and handle these problems.

- For example the developer can voluntarily restrict the number of initial sales to known buy-to-let investors. This will not, of course, prevent subsequent subletting by those owners or future owners.
- Where there is a management presence on site, good site induction procedures for new residents can assist the agent in knowing who is actually in occupation.
- On some estates the managing agent may also manage lettings for owners, which can also enable early action in case of problems.
- If there is a large unit ownership by a private buy-to-let investor, it may be appropriate that there is representation from the investor or lettings agent at any joint management meeting on the estate.
- All lettings should be required to replicate the relevant lease covenants in any tenancy agreement. This can be enforced through deed of covenant arrangements.

Where major strides forward could be taken is if professional lettings agents and lettings managers could work more closely with block managers and vice versa. Key issues to address would be :-

- Making available a copy of the lease and any 'house rules' to the letting agent.
- The letting agent ensuring that any permissions to sublet are obtained.
- The letting agreement containing relevant covenants in the lease.
- Informing the block manager of sub-letting with names and contact details of the tenants.
- Lettings managers cooperating with block managers on dealing with troublesome tenants.
- Lettings managers endeavouring to always be allowed to pay service charges out of rent received and the flat owner giving the block manager the right to send demands direct to the lettings manager.
- Ensuring tenants are aware of their obligations in living in a leasehold flat e.g. individual satellite dishes not being permitted.

There are ways in which control of subletting can be put into leases.

- Firstly, leases could contain an outright ban on subletting. Such a ban would not help sales, would upset most lenders, and may not be enforceable in the courts. A ban could also not be put on any social housing leases granted to and by housing associations.
- Secondly, permission of the landlord prior to subletting can be required. There would be a legal presumption of reasonableness on the part of the landlord. If leaseholders do ignore the requirement it would involve expensive legal action to enforce it; in practice it is easier to grant retrospective permission
- Thirdly and most commonly, the lease could contain a requirement to register the subletting with the landlord within say 28 days of the event. This is not control but it does serve to keep the landlord and agent informed of what is happening and to give an opportunity to keep in touch with absentee leaseholders. If the leaseholder ignores this requirement it is also costly to enforce. Agents often require a fee for granting permission or registering the subletting. A large fee may well mean the landlord is not told. Better to charge a low or nominal fee and be aware of the status of subletting on the estate.
- The problems of sublettings reported have focussed on lettings where no agent has been used for the letting. One proposal is that a clause is inserted into leases to require that subletting can only be carried out if either a specific letting agent or a suitably qualified and accredited letting agent is used. The use of an agent it is hoped will control the type and number of tenants and give the landlord and his/her agent a constant point of contact with the leaseholder.

Housing associations often have specialist officers to take action on anti-social behaviour and managing agents should work with such teams when appropriate.

## 11. COMBINED HEAT AND POWER (CHP)

CHP is the process of capturing and then utilising the heat produced by generating electricity. CHP for on-site generation will therefore involve a kind of district heating scheme and electricity sold to a private network of users in, say, a block of flats or a large development.

CHP involves high capital costs and some developers are looking at complex leasing deals to finance the initial costs. The CHP equipment will require specialist contracts to maintain and complex metering and billing systems.

S.20 rules do not fit easily with complex contracts for CHP equipment, maintenance and charges to leaseholders. Only contracts entered into for no more than five years at a point when there were no leaseholders or tenants in the building are exempt from s.20 rules; so contracts entered into by developers which include costs within a service charge for longer than five years could be challenged by lessees.

Another issue arises regarding the responsibility for recovery of the costs of heat and power from the various parties involved.

One option is to make the payment of costs a part of any leases or freeholds granted. This will mean that any leaseholder can challenge the payability and reasonableness of those costs at any time. Further the housing association may have to pay those costs as part of its leases at different times to those at which it recovers from its leaseholders and tenants; it will end up prepaying and also guaranteeing any arrears and debts and therefore will be reluctant to take this route.

A second option is to draw up contracts outside the leases for payment by any leaseholder, freeholder or tenant, making completion of these contracts a covenant within the lease. The costs of maintenance and depreciation of plant are usually treated separately from the unit consumption, with landlords who are letting their property needing to accept responsibility for the former, while their tenants must pay consumption costs. Specialist advice on this will usually be necessary. Associations may be asked to underwrite any arrears of payments by their sub-lessees and tenants in such contracts but generally will be reluctant to do this.

What form of charging is most reasonable? Individual metering would seem best but that begs questions about who will be responsible for installation, metering and billing. If pre-payment meters are considered, a decision will be needed as to who will pay for them and whether the charging rate is set fairly. There are specialist companies who can contract to do this work.

## 12. CONCLUSION

It is in all the parties' interests that the ideal of mixed - tenure estates is achieved in an efficient and workable manner: that the estate is a desirable place to live and tenure is not identifiable from the appearance of the property. Clearly, each scheme will be different and will require its own specific solutions but in every case, property management experts should be consulted to ensure the structure works in the longer term.

## LEXICON AND FURTHER INFORMATION

**S.20 Consultation** - refers to section 20 of the Landlord and Tenant Act 1985 (as amended by s.151 of the Commonhold and Leasehold Reform Act 2002) which requires landlords to consult with leaseholders before incurring expenditure on major works or entering into long term agreements for services.

**S.106 Agreement** - a type of planning obligation whereby a developer may provide new social housing as part of a larger development.

**Agent/managing agent** - refers to the company or organisation appointed by the landlord or RMCo to provide the management services specified in the leases for the estate. That company acts as the agent of the landlord or RMCo and is often known as the managing agent.

**HA** - a housing association. A not-for-profit organisation formed to provide and manage social housing, often referred to as RSLs or registered social landlords.

**Head lease** - a lease from which another shorter lease is carved out.

**LVT** - the Leasehold Valuation Tribunal, the body appointed to make decisions on various types of disputes relating to residential leasehold property. It is part of the Residential Property Tribunal Service.

**Reserve funds** - a fund created by the terms of leases to build up sums of money that can be used to pay for large items of future expenditure for an estate.

**RMCo** - stands for residents management company, a company set up to manage a leasehold block of flats in which some or all the leaseholders become members or shareholders. A means of allowing democratic control of the management of a block.

- The Leasehold Advisory Service publishes an excellent range of leaflets on leasehold topics including s.20 consultation. Free download from [www.lease-advice.org](http://www.lease-advice.org) or ring 020 7374 5380.

- The Association of Residential Managing Agents (ARMA) has issued over 70 guidance notes on leasehold issues for its members, some of which are available to the public. Go to [www.arma.org.uk](http://www.arma.org.uk) or ring 020 7978 2607.

- 'Leasehold management: a good practice guide' written by Peter Robinson is published by the National Housing Federation and can be ordered from [bookshop@housing.org.uk](mailto:bookshop@housing.org.uk) or 020 7067 1010.



# ABOUT ARMA...

ARMA is the only trade body in England and Wales to focus exclusively on matters relating to the block or estate management of long leasehold residential property, whether for resident management companies or investor freeholders.

With over 200 corporate members managing in excess of 800,000 units in more than 30,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties), ARMA members are committed to reputable practices, professional codes of practice, consistent levels of service and client satisfaction.

ARMA members comprise selected firms and sole practitioners. All members agree to adopt and abide by ARMA's principal objectives and undertake to comply with the Code of Practice issued by the Royal Institution of Chartered Surveyors (RICS) as approved by the Secretaries of State for England and Wales under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

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## ABOUT THE NATIONAL HOUSING FEDERATION...

The National Housing Federation represents 1300 independent, not-for-profit housing associations in England and is the voice of affordable housing. Its members provide two million affordable homes for five million people.

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