

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

- ARMA as a trade organisation for agents does not set any fee levels for its members or give any advice on what are market levels for fees.
- There is no norm or standard management fee for managing a block of flats. The fee will depend upon the size and type of property and the precise range and quality of services required.
- ARMA is however concerned that its members act ethically when negotiating with and charging fees to landlords including resident management companies (RMCo) or right to manage companies (RTMCo).
- We call the landlord or RMCo/RTMCo the client. So we have set out here what we believe is good practice for agents about management fees with their clients.

- "The managing agent should give, consistent with the terms of the contract with the client, reasonable and adequate notice of any increases in charges."
- "If the managing agents' charges are agreed to be subject to indexation, the index to which they are linked should be agreed in advance in writing."

The RICS code sets out the duties or services that would normally be covered by the standard annual fee of the agent, what is usually referred to as the management fee.

It also suggests a list of other duties and services provided by agents that would normally be charged for outside of the standard annual fee. Such extra services and the fees to be charged or the basis for charging should also be made clear as part of the management agreement.

Managing Agents and Management Fees

The management fees paid as one part of a leaseholder's service charge are the lifeblood of firms of managing agents. Those fees pay for the offices, salaries, national insurance, pensions and training of staff; and the computers, telephones, post, stationery and other things that agents have to provide. Without management fees there would be no managing agents. The rest of the service charge is used to pay for the services, repairs and insurances required.

The Lists of Services/Duties of Agents

ARMA has adopted a similar approach to the RICS code in its model management agreement for agents and their clients. The agreement requires the agent to agree two lists of services/duties with a client: one list will be done for the standard management fee and one will be charged additional fees if carried out. It also requires the agent to declare commissions.

Further in practice the standard fee will normally be stated as an annual fee for the whole development in total; not per unit. The per unit figure can be easily calculated and be used to make comparisons between agents.

The Code of Practice re Management Fees

ARMA members agree to abide by the RICS Service Charge Residential Management Code (2nd Edition, effective from 6 April 09) which states as follows:

- "Managing agents and their clients should enter into written management contracts. The basis of fee charging and duties should be contained in the agreement."
- "Your charges should be appropriate to the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, standard annual fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that tenants can budget for their annual expenditure. However, where the lease specifies a different form of charging, the method in the lease will be used by managing agents."

The management agreement should also be clear on whether the agent has the right to deduct its fees on certain dates from client monies held or whether fees can only be deducted with the express approval of the client, and when and how fees will be reviewed.

Fees as a Percentage of Costs

With regard to the use of percentages as a basis for fees, both ARMA and the RICS believe this is poor practice because they establish an immediate conflict of interest between the client and agent. However, there are leases which require the use of percentages and the landlord will have to charge in this way and so agents may have to follow.

Fees and an Average per Unit

By referring to fees as per unit of accommodation we are referring to an average basic fee per unit on the property. So if the fee were £6000 for 30 units the average would be £200. This does not of course mean that that is how this average fee will be charged to lessees. The apportionment of service charge costs including the fees will be determined by the lease.

Major Works, Long Term Agreements and Fees

It is normal practice that additional fees to the standard fee will be charged for the handling of major works and long term agreements, including the sending of the required consultation notices under section 20 of the Landlord and Tenant Act 1985.

Commissions

The RICS code states that “ insurance commissions and all other sources of income to the managing agent arising out of the management should be declared to the client and to tenants.”

The RICS code does not say when the declaration should be made but ARMA is clear that this should also be part of the management agreement and be declared before the contract is entered into by the client and the agent.

ARMA’s stance on commissions is that transparency and openness are required by agents as follows:

“If an agent receives commission directly or such commission is paid to any other member of the same group of companies as a result of undertaking the management, then ARMA requires that it its declared to the client, whether an investor landlord or residents management company. If a lessee or residents association makes a written request then an agent should declare any commission receivable.”

Handover of Schemes and Fees

ARMA encourages competition between agents and competitive levels of fees are part of normal business activity. If an agent is to take handover of a scheme previously managed by another agent we believe that caution should be exercised. In particular, the prospective agent needs to be aware if there are any disputes over unpaid fees and whether documents and funds available for continuing management are available. The prospective agent should ask the client to give access to the previous agent before handover with the ability to gather enough information to ascertain whether the fees proposed are

sufficient for the problems that may be handed on from the previous agent.

ARMA also believes that agents should consider a one-off charge for work involved with the handover of management and the taking on and setting- up management by a new agent.

It is ethically wrong for an agent to undercut a previous price if it knows that it cannot then devote the staff and other resources required to deliver the services promised at the price proposed.

Disputes about Management Fees

A client is quite entitled to dispute the fees charged by an agent even though the fees billed are as set out in the management agreement. If a client does dispute the fees charged then agents should furnish with the fee account or on request without further charge such details and evidence required to allow the client to understand the basis for the charges and the level of service provided.

If an agent claims fees that are not in accordance with the management agreement or estimate provided in advance then the agent should provide, at the time of billing, a full and detailed explanation of the reasons for the difference.

The Law and Management Fees

Any management fee charged by a landlord under a long residential lease is subject to the Landlord and Tenant Act 1985 definition of service charges (S19). So that fee can be challenged by any lessee as to its reasonableness and payability (S27A) before a Leasehold Valuation Tribunal.

Administration Charges

Many items which lessees may regard as management fees are not such as defined in Landlord and Tenant law. Only the standard fee for the provision of services and fees for major works and long term agreements will fall within the definition of management fee used by Leasehold Valuation Tribunals.

Other fees such as those for alterations, subletting, registration of assignments and deeds of covenants are classed as administration charges and can be challenged as to their reasonableness and payability at LVTs. These fees will normally be agreed with the client as part of the management agreement.

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