

Formation & Recognition of Residents' Associations

OVERVIEW

- Managers should encourage the formation of and co-operate with properly constituted and democratically run associations.
- Residents' associations have two options to obtain formal recognition.
- Formal recognition gives additional legal rights for an association.
- Managers have a choice of model constitutions they can encourage new associations to adopt.
- ARMA recommends the model attached to this guidance note.

APPROACH TO RESIDENTS' ASSOCIATIONS

Lessees have the right to form an association and for that association to be recognised either voluntarily by the landlord or compulsorily through the Rent Assessment Panel. However, this Guidance Note suggests that good business practice means that ARMA members should encourage the formation of properly constituted associations in order to assist with the management process.

Associations are usually formed in response to a problem. This could be a major building problem or other incident. It is sometimes a problem with the management of the block and the scene is set immediately for a confrontation with either the freeholder or its agent, or both. Consider therefore how much more productive the relationship could be if, from the outset, the agent brings the lessees into the management process, in a structured way, in order that everyone can feel part of the management process and lessees can understand better the decisions being made which ultimately they pay for.

INITIAL RECOGNITION OF RESIDENTS' ASSOCIATIONS

An association has the legal right to ask a Rent Assessment Panel to grant it the status of a 'recognised tenants' association'. This is the term used in statute law. If granted the association can serve notice on the landlord and so be able to exercise certain legal rights under the Landlord & Tenants Acts. (See below for checklist.)

In the interests of building positive co-operation how much better for a manager on behalf of the landlord to recognise an association voluntarily, without insisting on applying to the Panel. As a minimum all managers could adopt the same procedures published by the Panel as their own for granting recognition.

PROCEDURES FOR RECOGNITION OF RESIDENTS' ASSOCIATION

The procedures used by the Rent Assessment Panel are set out in a booklet called "Tenants' Associations" and in summary include the

following:

- The rules of the association should be fair and democratic.
- Membership should be not less than 60% of those qualifying on the scheme.
- Members must be paying a variable service charge to the landlord.
- Tenants paying fixed rents/service charges will not qualify for membership (but, of course, could be involved in the process informally).
- Only one vote per flat or home will be permitted.
- No more than one association per block/building will be recognised, but more than one per scheme is acceptable for larger schemes with several blocks

Documents required to be submitted before recognition are:

- A copy of the association's rules or constitution and elected officers.
- A list of subscribing members' names and addresses.

There is no charge for associations to apply to the Panel for recognition.

MODEL RULES/CONSTITUTIONS FOR ASSOCIATIONS

ARMA recommends its members to use the constitution in the attached appendix.

The Rent Assessment Panel also publishes a draft constitution for associations as an annex to its explanatory booklet that managers can adopt as a benchmark for voluntary recognition. See references below for details.

The Federation of Private Residents Associations publishes a model constitution in its leaflet called 'Information Pack-setting up a residents' association'. The leaflet also contains specimen notices for the inaugural general meeting and a guide to conduct of committee business.

AIMS and ARHM publish model constitutions suitable for retirement schemes.

RECOGNITION FOR HOW LONG?

A Panel will normally grant a certificate of recognition to an association for 4 years. The association can then apply again at the end of the period. Alternatively the Panel has the right to cancel recognition if it is no longer appropriate. Managers promoting voluntary recognition may wish to consider a different practice to counter some common issues with associations.

For example it is common practice for managers to require that any recognised association shall

submit the following **annually**.

- Confirmation that an AGM and correct voting-in of officers has taken place.
- List of elected officers.
- List of members (signatures are not necessary but may be requested if required).

You should reserve the right to withdraw recognition if:

- Membership falls below 60% of lessees.
- The rules of the constitution are not followed.

Whatever practice you decide to adopt should be set out in writing when recognition is first given.

WITHDRAWAL OF RECOGNITION

If a landlord has given formal recognition to an association then the landlord may withdraw it only by giving notice to the secretary of not less than 6 months. (S.29(2) of the L & T Act 1985).

A Panel may cancel a certificate at any time if it considers the association no longer merits recognition.

CHECKLIST OF LEGAL RIGHTS GIVEN TO RECOGNISED RESIDENT ASSOCIATIONS

The secretary of an association can:

- Ask for a summary of service charge costs incurred;
- Inspect accounts and receipts for the property in relation to service charge costs;
- Ask to be consulted about the appointment or reappointment of a managing agent; and
- Appoint a surveyor to advise on any matter relating to service charges. The surveyor will have the right to see and copy supporting documents held by the landlord, to inspect common parts, and to appoint assistants.

In addition managers should serve copies of any notices required under Section 20 consultation arrangements upon the secretary of any recognised association (whether recognised voluntarily by the manager or a Panel). Associations also have the right to nominate contractors and inspect any estimates/specifications.

As well as legal rights managers should consider whether to adopt formal arrangements for regular consultation within recognised associations. E.g. A regular meeting with the committee.

GOOD PRACTICE CHECKLIST

- Encourage properly run associations.
- Have a policy for voluntary recognition.
- Adopt the ARMA's model Constitution that you will recommend to associations.
- Have a procedure for continuing recognition.
- Decide what regular consultation you will extend to recognised associations.
- Ensure that the association does actually represent the interests of the majority (if not the whole) of qualifying residents.

CONCLUSION

By taking the initiative and suggesting the formation of an association, the agent draws more people into the management process and will probably generate more positive feedback on day to day issues. It will also demonstrate a business style in tune with the themes of openness and accountability. An association helps the partnership between landlord/agent and lessee, eases communication and reduces the duplication of messages.

REFERENCES

- L & T Act 1985 S.29 sets out recognition procedures & S30B the right to be consulted about the role of an appointed managing agent.
- "Tenants' Associations" Booklet about how Panels recognise associations, free from Residential Property Tribunal Service Tel: 020 7446 7700 or www.rpts.gov.uk
- Part 18 of RICS Service Charge Residential Management Code is about residents associations.
- AIMS, Advice Information and Mediation Service, part of Age Concern, has a model constitution for residents associations. Tel 202 8765 7465.
- FPRA, the federation of private residents' associations, publishes an 'Information Pack' which contains information to help leaseholders set up an association including model rules. £10 incl. p&p from 020 8530 8464.

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ARMA

178 Battersea Park Road, London, SW11 4ND.
T: 020 7978 2607 F: 020 7498 6153
E: info@arma.org.uk W: www.arma.org.uk

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ARMA Recommended Rules for Residents' Associations

WE, THE UNDERSIGNED, having resolved to form an Association to represent the interests of the leaseholders of the development known as (), on matters of common interests, have further resolved to adopt the rules of the Association annexed hereto which we have signed for identification purposes.

Dated.....

1.0 The Association shall be called () Residents' Association ('the Association')

OBJECTS

2.0 The objects of the Association are:

- 2.1 to represent the leaseholders on matters of common interest;
- 2.2 to consult with the lessor and/or its managing agent;
- 2.3 to preserve and improve, where required, the amenities enjoyed by leaseholders;
- 2.4 for the purpose of aforesaid, to employ solicitors, counsel, surveyors, engineers, accountants and other professional or qualified persons to advise the Association;
- 2.5 to do such other things, ancillary to the preceding objects, as may seem desirable to the Association.

MEMBERS

- 3.1 Any leaseholder may upon application and payment of the entrance fee become a full member. Only one vote per flat/house will be given in the case of joint leaseholders. A company that is a leaseholder of a flat/house shall be eligible for membership.
- 3.2 The committee may admit any other person as an honorary member.
- 3.3 In the rules the word "Member" shall, unless the context otherwise requires, mean a full member. Honorary members shall have neither rights nor obligations, except they shall have the right to attend and speak (but not vote) at any general meeting of the association.

COMMITTEE

- 4.1 The committee shall consist of not less than (.....) members who shall be elected by remaining members of the Association. At each annual general meeting (AGM) all committee members shall resign but shall be deemed to be re-elected (if willing to act) in absence of other nominees.
- 4.2 Unless the chairman otherwise decides, no person shall be nominated for membership of the committee unless at least 7 days prior to the annual general meeting, written notice of such nominations shall be given to the secretary, save that existing members of the committee shall be deemed to be duly nominated.

OFFICERS

- 5.1 The committee shall elect a chairman (who shall be chairman of the Association and remain such until a new chairman shall be elected) and shall appoint a secretary or treasurer.
- 5.2 The secretary shall keep and make available for inspection whenever requested to do so by a member:
 - A record of the business transacted at the AGM.
 - Copies of all written and notes of all oral communications with the landlord and/or agent and any replies received.
- 5.3 The Association in general meeting shall appoint two members (not being members of the committee) to act as auditors.

MEETINGS

- 6.1 The first AGM shall be held within 3 months of the end of the first financial year end.
- 6.2 Thereafter an AGM shall be held each year in the month ofand 21 days' notice in writing of it shall be given to every member at his/her flat/house. A report shall be given at the AGM by the chairman indicating the Association's work over the past year.
- 6.3 Special general meetings shall be called on the requirement of the committee or of at least (....) members. At least 14 days' notice in writing thereof shall be given to every member aforesaid. The notice shall indicate in general terms the principle business to be considered at the meeting.
- 6.4 At the AGM of the Association, or at any special general meeting, 25% membership shall constitute a quorum, and if not present the meeting shall be adjourned to another day when members present shall form a quorum.
- 6.5 Seven days' notice in writing must be given to the secretary of any resolution to be moved at the general meeting unless such resolution is admitted by the chairman at the meeting.
- 6.6 A notice containing all resolutions and nominations to be moved, with the names of those proposing and seconding each resolution or nomination, shall be kept by the secretary and be available for inspection by any member for seven days before the general meeting.
- 6.4 All members shall have the right (subject to control of the chairman) to speak at any general meeting.
- 6.5 All members shall have the right to vote on any resolution before any general meeting.
- 6.6 Any member entitled to vote may demand a poll which shall be taken forthwith.
- 6.7 Any member entitled to vote may authorise in writing (such authority to be satisfactory to the chairman) another member to vote on his behalf.
- 6.8 In the event of the equality of votes on any resolution the chairman shall have the casting vote.

SUBSCRIPTIONS.

- 7.1 Each person on applying to become a member of the Association shall pay an entrance fee. Until otherwise determined by Association in general meeting the entrance fee shall be £
- 7.2 Each member shall pay subscriptions in accordance with the resolution of the Association in general meeting.
- 7.3 The committee may expel any member who shall after 14 days' notice, addressed to him and sent by post to, or delivered at his/her apartment at.....(name of development) , remains in default in paying any subscription.

FINANCE

- 8.1 The treasurer shall have control of funds of the Association and, save where required for immediate expenditure, he/she shall pay the same into a bank account or building society as directed by the committee.
- 8.2 The property and funds of the Association shall be held and administered by the committee and resolution of the committee shall be sufficient authority for any payments from the bank or building society accounts.
- 8.3 The committee is not authorised to incur any overdraft.
- 8.4 All cheques or requests for cheques or warrants shall be signed by the treasurer or secretary and one of the committee.
- 8.5 The financial year shall end onup to which date any annual statement of accounts and balance sheet be submitted for approval at the subsequent annual general meeting.

INDEMNITY

- 9.1 The members of the Association shall indemnify the officers of the Association and members of the committee against all liability incurred by them in good faith on behalf and in the name of the Association acting within their authority.

ALTERATION OF RULES

- 10.1 These rules may be varied or added to by resolution of the Association in general meeting, passed by a majority of at least two thirds of the members present in person or by proxy under rule 6.7, of which resolution notice shall be given in the notice convening the meeting.

COMPLAINTS

11.1 All complaints or suggestions on matters regarding the Association shall be made to the secretary, preferably in writing.

DISSOLUTION

12.1 The Association may be dissolved if the number of full members at any time falls below (...) and the committee so resolve, or if the Association in general meeting so resolves by a majority of at least two thirds of the members present in person or by proxy under rule 6.7 of which resolution notice shall be given in the notice convening the meeting.

12.2 On such dissolution any balance of the funds of the Association shall be distributed equally between the then members (who are not in arrears with their subscriptions) OR shall be paid to a suitable charity to be decided upon by a majority of the membership.

COMMITTEE

13.1 The members of the committee are:-

- Chairman
- Secretary
- Treasurer
- Member
- Member.....
- Member.....

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