

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

The note summarises the main rights to information given to leaseholders by Parliament.

ABOUT YOUR LANDLORD

You may not be certain who the landlord of your block is.

Every demand or invoice for a ground rent or service charge from your managing agent must include the name and address of the landlord. If the landlord is not based in England and Wales then a further address in England and Wales at which you can contact this landlord must be added. So look at your last invoice. The legal reference for this right is S.47 of the Landlord and Tenant Act 1987.

If the landlord of your block changes or you suspect it may have changed you have two useful rights. Firstly, the new landlord has a legal duty to serve a notice on all the lessees of the block telling you of the change of landlord and the name and address of the new landlord. (S.3 of the Landlord and Tenant Act 1985)

Secondly, every lessee has the right to make a written request to the managing agent (or whoever is demanding ground rent and service charges) asking for the name and address of the landlord. When writing state that this is a request under S.1 of the Landlord and Tenant Act 1985. The agent has 21 days to reply. If you find out the landlord is a company you then have the right to make a further written request either to the landlord or the agent asking for the name and address of every director and the company secretary. Refer to S.2 of the Landlord and Tenant Act 1985 when writing for information about the directors.

A word of caution. When freeholds of blocks of flats are sold it is often by way of the sale of shares in companies.

So even though the owners of the company may have changed the same company will still be your landlord. Remember you can also search for the name of your landlord at the Land Registry and for company details at Companies House.

ABOUT YOUR MANAGING AGENT

If your agent is demanding payment of ground rent and service charges you should have a name and address. If your agent is a member of ARMA you can visit ARMA's website and look at the "search for members" area to find the name of a senior member of staff, address, telephone, fax, email and website information.

What if you are not happy about the appointment of an agent by your landlord? Recognised tenants associations (see end for explanation of this term) have rights to be consulted about agents, but not individual lessees unless there is a long-term agreement for services (See below).

A recognised tenants association (hereafter referred to as RTA) can serve a written notice by letter on the landlord stating that they wish to be consulted on matters relating to the appointment or employment of the managing agent for their block. Refer to S.30B of the Landlord and Tenant Act 1985 when writing about this right.

Within one month of the RTA's letter the landlord should write to the RTA and include the following information:-

- The management duties which the landlord has appointed the agent to carry out.
- Give the association a reasonable period (a minimum of 30 days) in which to send the landlord its comments on the agent's performance.
- The name and address of the person to whom the association should send the comments.

The landlord “shall have regard” to the association's comments on the performance of the agent but has no duty to act.

INSURANCE

Your flat is a major investment and you will want to know it is adequately insured. The landlord is usually responsible for arranging the insurance of the block but you have rights to know how this is done. Any lessee or a RTA can write at any time to the landlord or agent for information about the insurance of the block.

You have several options:-

- You can ask for a summary of the insurance policy which should include the name of the insurer, the sum insured and a summary of insured risks.
- You can write to the landlord or agent and ask to inspect the policy and any associated documents (e.g. proof of payment of premiums) at their office. You can also add you will wish to take copies.
- You can write to ask for copies of the policy and other associated documents you specify be sent to you or be made available at the office for you to collect.

For any of these written requests the landlord or agent has 21 days from receipt of your letter to comply. The agent can charge you for copying but not for inspecting.

When making these requests you should refer in your letter to S30A and the Schedule to the Landlord and Tenant Act 1985.

GROUND RENTS AND YOUR RIGHTS

On every occasion that your landlord demands a payment of ground rent it must be accompanied by a prescribed notice that includes information about your rights regarding forfeiture and failure to pay ground rent. The legal reference for this information is S166 of the Commonhold and Leasehold Reform Act 2002 (2002 Act).

SERVICE CHARGES AND ACCOUNTS

You may feel you are being charged for things you do not agree with or the sums seem too high. Or you wish to see a proper set of accounts before the next charge is due. You and a RTA have rights to obtain information about the expenditure on services.

You can write and ask your landlord or agent to supply a summary of relevant costs making up the service charges for the last accounting period. Refer to S.21 of the Landlord and Tenant Act 1985 and use the phrase “relevant costs” in your letter. The summary of costs provided has to be certified by an accountant if your block contains more than 4 flats. If your agent normally supplies a set of service charge accounts every year there would be no need to do this unless you believe that they are not accurate.

If you have requested and received the summary of relevant costs or received a statement of account from your agent, you then have a right to seek information behind the figures if you are still not happy. Any lessee or RTA can request to inspect any receipts or invoices which support the figures in the accounts or summary. You need to write a letter and refer to S.22 of the Landlord and Tenant Act 1985. Your agent has to reply within one month from receipt of your letter and allow a period of two months from that reply for you to inspect. The inspection will usually be at the agent's offices. During the inspection you can take copies of documents but the agent can charge for copies and for having a member of staff in attendance to take copies.

SUMMARIES OF RIGHTS ABOUT SERVICE CHARGES

Every time that your landlord demands a payment for service charges then the demand or invoice must be accompanied by a summary of your rights and obligations about service charges. The legal reference is S 153 of the 2002 Act.

SUMMARIES OF RIGHTS ABOUT ADMINISTRATION CHARGES

Certain fees charged by landlords and agents are defined in law as administration charges. The main categories are fees for consents, approvals, late payment of service charge and ground rent. Every time the landlord or agent demands an administration charge it should be accompanied by a summary of lessee's rights and obligations about such charges. The legal reference is S158 of the 2002 Act.

INFORMATION ABOUT MAJOR WORKS TO YOUR BLOCK

You have rights to be consulted about major works on your block before they take place and as part of that consultation you must be given information about the works proposed. Major works are defined in law as

‘qualifying’ works costing any one lessee in the block more than £250. Your agent has to send you prior written notice of the works. The first notice, called the notice of intention, should describe the works proposed or tell you where you can look at the detailed proposals and allows you to nominate a suitable contractor of your choice.

The second notice, the statement of estimates, should include at least two estimates and tell you where you can inspect the original documents for those estimates.

You may therefore have to travel to the offices of the agent to inspect but you should be able to look at the specification or tender documents used and the priced estimates submitted.

In any correspondence you write about major works you should refer to S.20 of the Landlord and Tenant Act 1985. Remember you need to act quickly when you receive these notices. You only have 30 days to look at the information and then send your comments to the agents; otherwise you are too late.

INFORMATION ABOUT LONG TERM AGREEMENTS FOR SERVICES

You may be concerned that the landlord has signed a major contract for say cleaning or window cleaning that you are not happy about. You have rights to information and to be consulted about some of these contracts; what in law are called long term agreements. Long-term agreements are defined as contracts for services for more than one year and costing any one lessee in a block more than £100 per year. Long-term agreements do not include contracts of employment for, say, concierges but can include the contract for the managing agents.

As for major works your right to be consulted under S.20 of the Landlord and Tenant Act 1985 means you should receive information before the contract can be signed. The first notice of intention must describe what the agreement is about and the second notice of proposals should list the estimates received and tell you where you can inspect these estimates.

THE RIGHT TO A MANAGEMENT AUDIT

This right allows a group of lessees in a block who are unhappy with its management to appoint a surveyor or an accountant to independently report on whether the management is effective and cost efficient. The audit does not mean a landlord has to change matters but it may be useful if a group of lessees is considering

challenging the appointment of a manager or exercising the Right to Manage.

The right is only available if 2/3 of the lessees in the block support it, so any letter to the landlord or agent will require signatures of those lessees as proof. You choose who will be the auditor - it must be a qualified accountant or qualified surveyor.

The chosen auditor then serves a written notice on the landlord and agent asking for the right. The notice must specify what documents the auditor wishes to look at and state a date on which the auditor wishes to inspect any common parts of the premises. The legal reference is S.78 of the Leasehold Reform and Urban Development Act 1993.

THE RIGHT TO APPOINT A SURVEYOR

A similar right to the management audit is the right to appoint a surveyor who can require the landlord to give access to documents and common parts of the block. This right is given only to recognised tenants' associations. The right is exercised by the association writing to the landlord or agent setting out the name and address of the surveyor, the duration appointed for and the matters in respect of which he/she is appointed. The legal reference to quote in a letter is S.84 of the Housing Act 1996.

RECOGNISED TENANTS' ASSOCIATION (RTA)

This is a legal term for an association that has been recognised by the landlord or by the rent assessment panel under S.29 of the Landlord and Tenant Act 1985. In general, recognition will be granted if the association has a membership of 60% or more of lessees, a proper constitution and elected officials. Recognition in this way does give access to greater rights to information. See Lessee Advisory Note 19 on the ‘advice page’ on ARMA’s website about formation of a residents’ association.

DATA PROTECTION RIGHTS

Lessees have the legal right to see the information held about them by their managing agent or landlord. The lessee should make a written request for access and the agent has 40 calendar days to respond. You may be charged up to £10 for the request but VAT should not be added to the figure.

FURTHER INFORMATION

The Leasehold Advisory Service has lots of good advice guides about leaseholders’ rights. Go to:

www.leasehold-advice.org/publications

The government has issued a useful guide titled ‘Residential long leaseholders: guide to your rights and responsibilities’ which can be downloaded from:

www.communities.gov.uk/publocations/housing/booklet

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