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The law as stated during this webinar is up to date as of **8 September 2016**

RIGHT TO MANAGE- PART 1



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Learning Objective



By the end of this training, you will gain knowledge of:

- Eligibility and criteria for RTM
- Contents of notices
- Getting notices right
- Service of notices
- Acquiring RTM

Introduction & Qualification Criteria



- Statutory Authority
- Commonhold and Leasehold Reform Act 2002
 - SS71 -113
- Right to Manage
 - Prescribed Particulars and Forms (England) Regulations 2010
 - Prescribed Particulars and Forms (Wales) Regulations 2011
- RTM Companies
 - Model Articles (England) Regulations 2009
 - Model Articles (Wales) Regulations 2011

Relevant litigation legislation



- Tribunal (First-tier Tribunal) (Property Chamber) Rules
- Leasehold Valuation Tribunal Procedure (Wales) Regulations 2004
- Civil Procedure Rules and Practice Directions

Consequences of RTM



- RTM company takes over management plus duties and functions under leases with certain exceptions

Why go for Right to Manage?



- Fault does not have to be proved
- No need to pay premium
- All can join the RTM company
- Ability to appoint professional agent
- Simple procedures, no requirement for court order

Key issues include...



- Does the building qualify?
- Gathering information for the statutory notices
- Are enough qualifying tenants interested?
- What to include in the claim notice
- Professional fees
 - Including landlords

The building - Section 72



- Self-contained
 - Whole or part
 - With or without appurtenant property
- Contains two or more flats held by “qualifying tenants”
- Total number of flats held by QT’s not less than 2/3rds total number of flats contained in the building

Self-contained - whole



- Structurally detached
- Question of fact and degree whether any attachment is of structural nature
 - *No.1 Deansgate (Residential) Limited v No.1 Deansgate RTM Company Limited* [2013] UKUT 580 (LC)

Self-contained - part



- Vertical division of building
- Capable of being developed independently of rest of building



Self-contained - part

- “Relevant services” are either
- Provided independently from services provided to rest of building or
- Could be so provided without carrying out work likely to result in “significant interruption” in provision of services to occupiers of rest of building
- “Relevant services” = services provided through pipes/cables/other fixed installations



Vertical division of building

- *Re Holding and Management (Solitaire) Limited v Finland Street 1-6 RTM Company Limited [2008] L. & T.R.*
- Strict vertical division and no deviation



Independent development

- Question of fact
- Expert evidence
- *Oakwood Court (Holland Park) Limited v Daejan Properties Limited [2007] 1 E.G.L.R. 121*
- The judge set out the appropriate approach.....



Independent services

- Have "relevant services" provided independently from rest of building or
- Could be so provided without **significantly interrupting** supply to rest of building
- *Oakwood Court (Holland Park) Limited v Daejan Properties Limited [2007] 1 E.G.L.R.121*
- The judge set out the appropriate approach.....



The Holland Park approach

- Identify services
- Consider whether those services could be provided independently
- Ascertain works required to separate services
- Assess interruption to the services
- Decide whether such interruption is "significant"



Appurtenant property

- S112(1) –in relation to a building or part of a building or a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat
- *Gala Unity Limited v Ariadne Road RTM Company Limited [2012] EWCA Civ 1372*

The Gala Unity judgment



- It was unnecessary for the RTM company to specify in the Claim Notice what (if any) appurtenant property it intended to manage, as a successful RTM automatically leads to the acquisition of the management of the building and of any property appurtenant to the building
- Property is appurtenant if it is appurtenant to any flat in the building. This is of two sorts. The car port or car parking space included in the area granted to the leaseholder and the rights of way and other rights granted under schedule 2 of each flat's lease

The Gala Unity judgment



- The fact that those rights were shared with other leaseholders including those in the coach houses not taking part in the RTM claim was not relevant
- There was no basis to conclude that "appurtenant" meant only property which exclusively served the building subject to the RTM

Appurtenant property revisited



- *Miltonland Ltd v Platinum House (Harrow) RTM Co. Ltd [2015] UKUT 236 (LC)*
- Landlord challenged validity of claim notice on the basis that claim notice included property, a small yard, not falling within the statutory definition of "premises"
- Question was whether the inclusion of parcel of land over which RTM Co not entitled to acquire right invalidated the claim notice?

The Platinum House Decision



- Upper Tribunal agreed with the RTM Co by holding that the premises were correctly described
- Held that there is no requirement to define appurtenant property
- Determined that premises forming part of the application should be construed as being the land *within* the area edged red which can be properly included in the claim

The building



- Must include two or more flats
- At least 2/3 of flats must qualify
 - 21 years plus lease
- Commercial space no more than 25% of total area
 - Excluding common parts
- Exclusion (Schedule 6)
 - Resident landlord in a conversion containing up to four flats
 - Local housing authority as immediate landlord

Flat - S112(1)



- Separate set of premises (whether or not on the same floor) which
- Forms part of a building
- Is constructed or adapted for use for the purposes of a dwelling, **and**
- Either the whole or a material part of which lies above or below some other part of the building

Qualifying tenant - S75



- A person is the qualifying tenant of a flat if he is tenant of the flat under a long lease
- No residence requirement
- No bar on multi-flat owners
- NB Exceptions

Long lease - S76(2)



- It is granted for **a term of years certain exceeding 21 years**, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise
- It is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease)
- It takes effect under section 149(6) of the Law of Property Act 1925 (leases terminable after a death or marriage)

Long lease - S76(2)



- It was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985
- It is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent, or
- It was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (the right to acquire)

Sub-leases and joint tenants



- Can only be one qualifying tenant
 - Headlessor would not qualify
- Where a flat is being let to joint tenants under a long lease, the joint tenants shall be regarded as jointly being the qualifying tenant of the flat

Trustees



- Trustees who are qualifying tenants may join an RTM company unless expressly barred from doing so by the trust instrument

Which leases are exceptions?



- Business leases
 - Part II of LTA 1954
- Unlawful sub-leases

Right to Manage



- THE RIGHT IS EXERCISED BY RIGHT TO MANAGE COMPANY

RTM company - S73



- Limited by guarantee
- Objects or one of them include acquisition and exercise of premises in question
- Can incorporate without required number of members needed to serve claim notice

Get the articles right



- Prescribed form and content
- Comply with RTM Companies (model articles) regulations
- Prescribed articles have effect whether or not adopted
 - Reg.2(2)
- *Fairhold Mercury Limited v HQ (Block 1) Action Management Company Limited* [2013] UKUT 487(LC)
 - Any provision inconsistent with the regs. is of no effect
 - Does not matter that company name did not include the letters "RTM"

Membership



- Qualifying tenants
- Any landlord, post acquisition
- NB Voting structure

Cannot have two for same building - S73(4)



- A company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises

Can you have one RTM company for more than one building?



- *Triplerose Ltd v 90 Broomfield Road RTM Co Ltd* 2015 EWCA Civ 282
- One RTM company *per building*
- Section 71 provides for right to be acquired in relation to “premises to which this Chapter applies” and “only by a company which, in accordance with this Chapter may acquire and exercise those rights”

Can you have one RTM company for more than one building?



- Three conditions must be satisfied
 - Premises must be self-contained/part of a building
 - Qualifying tenants
 - Number of flats held by qualifying tenants

RIGHT TO MANAGE: NOTICES GALORE



Notice of invitation to participate - Contents (1)



- Section 78
- Use prescribed form
 - [Schedule 1 Prescribed Particulars and Forms Regulations](#)

Notice of invitation to participate – Contents (2)



- Names of existing members/directors/secretary
- Registered office/number
- Details of landlord/third party to lease
- Prescribed statements

Notice of invitation to participate - Contents (3)



- Managing agents
 - New /existing
- Members experience of management
- *Bernhard Baron RTM Company Lt v Unicourt Ltd LON/OOBG/LRM/2007/0005*
 - Failure to identify proposed agent not fatal
 - Important to know whether or not an agent will be appointed not precise identity

Notice of invitation to participate - Contents (4)



- Availability of Articles of Association
- *Goldings Hall RTM Company Ltd v Goldings Estates Ltd (CAM/26UD/LOA/2011/0001)*
 - Failure to comply will not invalidate NITP as Articles are also prescribed
- Do not forget the **notes**
- Good practice to include application form
- Enter membership details in company register

Notice of invitation to participate - Contents (5)



- Invitation notice rendered invalid if prescribed notes are omitted
- *Triplerose Ltd v Mill Hill House RTM Co. Ltd* [2016]UKUT 80 (LC)
 - *"I am satisfied that as a matter of construction of the statutory scheme the inclusion of the notes in the prescribed form is essential to the validity of a notice of invitation to participate. It follows that the documents served on the qualifying tenants which omitted the notes in their entirety were not notices of invitation to participate compliant with section 78. As a result the RTM company was prohibited by section 79(2) from giving a claim notice seeking to acquire the right to manage." Per Martin Rodger*

Notice of invitation to participate



- Section 78(7) – Saving provision
 - *"A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section"*
- *Dymond v Arundel - Timms* (1991) 23 P.&C.R.397(CA)
 - Omission which is deliberate and intended to mislead does not qualify as an "inaccuracy" and is not within saving provision

Notice of invitation to participate - service



- By post
 - Ordinary/recorded/registered
- By hand
 - Sworn statement

Notice of invitation to participate - service



- At the flat unless
 - RTM company given alternative address for service – direct communication
 - *Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 0213 (LC) at [42]*
- Failure to serve notice does not necessarily invalidate notice
 - *Sinclair Gardens Investments (Kensington) Ltd v Oak Investments RTM Company Ltd LRX/52/2004*

Gathering information – pre-claim



- Section 82
- Information **reasonably required** in order to serve Notice of claim
- Not prescribed
- Can be served on any person
 - Landlord
 - Managing/letting agents
 - Solicitors

Gathering information – pre-claim



- Includes right to inspect documents
- **28 days** to comply
- Default notice – county court
- Alternative ways of finding out

Notice of claim - contents (1)



- Section 79
- Use prescribed form
- **Schedule 2 Prescribed Particulars and Forms Regulations**
- Do not forget the **notes**

Notice of claim - contents (2)



- RTM company
 - Name and registered office
 - *Assethold Ltd v 15 Yonge Park RTM Company Ltd (2011) UKUT 379 (LC)*
 - Failure to provide correct address was not an "inaccuracy". Tribunal drew distinction between typing/spelling error and failure to provide mandatory details
- Full details of premises

Notice of claim - contents (3)



- *Miltonland Ltd v Platinum House (Harrow) RTM Co Ltd 2015 UKUT 236 (LC)*
- It is not necessary for the RTM claim notice to state that there is any property appurtenant to the building or part of the building over which the right to manage is claimed
- and if reference is made to such property - it is not necessary to specify precisely what that property is

Notice of claim - contents (4)



- Full name of company members and address of flat
 - *Marina Court (Paignton) RTM Company Ltd v Gibbs*
CH1/00HN/LRM/2005/0003
- Failure to provide the names of the those tenants was a fatal defect in claim notice
- Section 81(2) – including a lessee who is not a qualifying tenant does not invalidate notice

Notice of claim - contents (5)



- Details of lease
 - Date of grant
 - Length of term
 - Commencement date of term

Notice of claim - contents (6)



- Landlord and any third party given **one month** to serve counter-notice
- Specify acquisition date not less than a **further three months** (4 months from Notice of claim)
- *3 Kings Road Westcliffe Essex RTM Company Ltd v Westleigh Properties Ltd*
 - No date was specified = not valid
- Prescribed statements

Invalid claim notice



- *Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Ltd [2008] L.&T.R.8(Ch)*
 - LRHUDA 1993 S13 Notice was found to be ineffective. Held it does not need to be withdrawn
- *Avon Freeholds Ltd v Regent Court RTM Company Ltd [2013] UKUT 213*
 - Confirmed this view

Notice of claim - service (1)



- Not less than **14 days** after Notice of invitation to participate sent to lessees
- Membership comprises **50%** of flats in building on relevant date

Notice of claim - service (2)



- Check register of members complete
- Serve landlord and any other party to lease
 - *Wellcome Trust v Bellhurst Ltd [2003] H.L.R 10 (CA)*
 - Only necessary to serve third parties who have a continuing involvement with the lease at the time the notice was given
- Copy to qualifying tenants

Notice of claim - service (3)



- By post
- By hand
 - Sworn statement
- Registered office/ principal place of business
- Sections 47 and 48 of Landlord and Tenant Act 1987
- Missing parties
 - Tribunal application under **Section 85** of the Commonhold and Leasehold Reform Act 2002

The acquisition date



- Section 90 CLRA
- RTM company takes over management on the acquisition date
- Date specified in the claim notice if
 - No counter notice served by landlord
 - Counter notice served and admits the right
- Or
 - Three months after determination or order of the appropriate Tribunal
 - Three months after subsequent admission of right by landlord

Getting ready for acquisition date - Information (1)



- **Section 93**
- All information “which the company reasonably requires (the landlord) to provide in connection with the exercise of the right to manage”
 - Within **28 days**
 - Not before acquisition date



Getting ready for acquisition date - Information (2)



- Default notice – county court
- Draft Section 93 notice in advance
- Can be served at any time
- **Section 83**
- Right of access for inspection



Contract/Contractor Notices (1)



- **Sections 91/92**
- Contractor notice – served on contractor
- Contract notice – served on RTM company
- Prescribed in **Wales**



Contract/Contractor Notices (2)



- Served on **determination date** or as soon as reasonably practicable thereafter
- **Determination date**
 - Date for counter notice
 - Date Tribunal determination becomes final



Questions?

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