



PROUD TO BE DIFFERENT



## RIGHT TO MANAGE GUIDE





## What is Right To Manage?

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The Right to Manage (RTM) was introduced by the Leasehold and Commonhold Reform Act 2002. It gives Leaseholders the right to take over the management of their block from their Freeholder.

Having the Right to Manage means that the Leaseholders can force the Landlord to give them the collective power to assume block management responsibilities through a limited company. This means individual apartment owners have much greater control over how they manage their block and who manages it.

Right to Manage is generally used by Leaseholders who are unhappy with how their block is being managed however Right to Manage is non-fault based. This means that Leaseholders don't have to prove that the Freeholder has been negligent or incompetent.

## What Is The Process Of RTM?

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Leaseholders have to set-up and become members of a limited company called a Right to Manage Company, which will take over responsibility of the Freeholder's duties under the lease with respect to services, repairs, maintenance, improvements, insurance and management.

The RTM company must have an Articles of Association which govern the purpose and running of the company. The Articles are prescribed by law and a company will not be a valid RTM company for the purposes of the Act if it does not match these provisions.

At registration a Memorandum of Association is required which is a short statement from the subscribers setting out their intention to incorporate the company together with a list of their names.

All qualifying Leaseholders are entitled to become members of the RTM company; no-one may be excluded for any reason. It is also important to remember that, once the Right to Manage has been acquired, the Freeholder is also entitled to be a member of the company.

Two important notices must be served in accordance with the law to ensure the RTM Company is compliant. There are also considerations with the Land Registry that need to be addressed.

This action can be exercised whether or not there is a management company which is party to the lease as an RTM Company, on its Acquisition Date would acquire the management functions of the landlord and any other party to a lease of a block. Therefore, a Tripartite Lease will not be an obstacle to the RTM process.

It is also worth noting that the Freeholder cannot charge a fee from the Leaseholders to enable them to exercise this legal right; although Leaseholders would be responsible to pay both parties legal fees and any other associated costs.

## How Long Does RTM Take?

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The RTM Company follows a formal process to give notice of claim to the freeholder, agree the claim, and prepare to take over the management. In most cases an RTM application will take about five to seven months from start to finish. It may take longer if the landlord decides to contest the application.

## Does Your Block Qualify For RTM?

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Before incurring the costs of a Right to Manage application it is essential that you understand the qualification criteria and can assess whether or not a block will qualify.

We have set out the four key criteria below:

### **1. The block is a separate building or self-contained part of a building**

To qualify for RTM, a block must be structurally detached. You need to consider the parts above ground as well as aspects such as an underground car park or gym facilities that might be shared with other buildings.

Certain tests can be applied to help assess if a block is self-contained:

- Could the block be redeveloped independently of the rest of the building?
- Are the services (gas, water, electricity etc.) independently provided?
- Can these services be changed or interrupted without affecting the rest of the building?

### **2. The block must have enough qualifying tenants**

To be eligible for Right to Manage, two or more of the flats must be held by qualifying tenants and the total number of flats held by those tenants must not be less than two thirds of the total number of flats. A qualifying tenant is

a leaseholder whose lease was originally granted for a term of more than 21 years.

At least 50% of the apartment owners within the physical block of flats must want to go through the process when the Claim Notice is served.

### **3. No more than 25% of the block may be used for commercial use**

If the commercial / residential split isn't clear, it may be necessary to get expert opinion on the internal floor area. When calculating the commercial percentage, an assessor will include any dividing walls to the commercial unit and also any commercial car parking spaces.



### **4. Resident landlords**

This criterion relates to smaller properties where the landlord is one of the resident tenants. In this instance a block will not qualify for RTM if:

- The building is not a purpose-built block, and
- The block has four or fewer flats, and
- The landlord (or an adult member of their family) has lived in one of the flats for the last year.

If the freeholder believes that the building doesn't qualify, or the correct process for the claim has not been followed, they may reject the claim. It may be necessary to apply to the First Tier Tribunal (Property Chamber) for a judgement on the claim. The process is reasonably lengthy and usually takes 6- 8 months.

If a block fulfils these criteria, then it is likely the block will be able to go through the RTM process successfully. However, leaseholders applying for the Right to Manage will be liable for the costs incurred by the freeholder as well as their own legal costs. This makes it crucial to do sufficient due diligence from the outset to ensure that a block qualifies for RTM before starting to incur any significant costs.





## RTM Limitations

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It is important to note that any RTM Company would only inherit the existing management structure from a block's lease, in particular the relevant covenants affecting the management of the block. Therefore, should an existing lease be deemed defective or inadequate, a newly established RTM company has no ability to extend or vary the existing leases to remedy any such defects to allow for better management. Examples of this are leases that do not cover the setting up of a Reserve Fund or provide interest provisions for late payments.

This must be taken into account when evaluating the viability of proceeding with an RTM action. For this and many other factors, it is therefore highly advisable to seek independent legal advice from specialist legal professionals at the outset to undertake a forensic examination of a block's legal structure prior to further action.

## The Benefits Of RTM

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Generally speaking, RTM is a positive step for leaseholders who wish to take control of the management of their block and how their service charge monies are spent. The main benefits include:

- Increased accountability to Leaseholders- through a company which all Leaseholders can become members of and which they can choose to become a volunteer director of.
- To give Leaseholders a say in the appointment and retention of the managing agent.
- Some Freeholders charge well above the market rate for certain services owing to their indifference to leaseholders. Exercising the RTM will give Leaseholders the opportunity to re-tender certain services and in some cases achieve big savings. Buildings Insurance is commonly an area where costs are likely to go down.
- Greater control on how their block is managed



## The Challenges Of RTM

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The RTM Company takes over most of the obligations and responsibilities of the Freeholder and they must comply with the lease in the same way that the Freeholder should do.

The RTM company should not save money by reducing essential services or by allowing the block to deteriorate. The covenants in the lease should specify service provision and require the property to be maintained as it becomes necessary, not when convenient.

The Freeholder will still demand and collect any ground rent and there are some circumstances when the Freeholder still has to give their consent even after the RTM has agreed a course of actions, such as for assignment of a lease or consent for alterations.

The RTM Company will be subject to a written constitution and must be transparent with its finances. In addition, all leaseholders have the right to be elected to the board of directors for the company. It is advisable for an AGM to take place each year to elect and re-elect the Directors.

At least two owners of different flats will need to volunteer to become Directors of the new RTM Company and become responsible for overseeing the management, although they can have the help of a managing agent.

The volunteer directors have a duty to act in the best interest of the company and they should avoid conflicts of interest particularly on issues relating to their own property.

There may be difficult and sensitive issues in dealing with neighbours and fellow Leaseholders.

The handover from the previous agent can be fraught. All existing contracts are severed at the acquisition date and there is often a delay in receiving existing service charge funds.

## How Horizon Can Help

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At Horizon Management we can help you with the Right to Manage process, including:

- Checking the validity of the claim, lease and Land Registry document review, visiting the site.
- Arranging formation of the company, creating membership forms and registering of members, appointing Directors and acting as interim Company Secretary.
- Serving the necessary notices to Leaseholders and the Freeholder.
- Providing follow up information to the Freeholder to enable them to validate the claim.
- Keeping Leaseholders up to date with the process.
- Confirming the claim and arranging registration at the Land Registry.
- Once the claim is accepted, we can handle the handover process with the outgoing Freeholder / managing agent and manage the development going forward, if required.

## Once It Is Complete

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The Right to Manage process is a great way to have more control over your residential block, however when the RTM process has finished, the Directors of the RTM Company will suddenly have the burden of block management responsibilities for the entire building to deal with. Normally, those who are responsible for this management will hire a professional managing agent to help support them.

A managing agent, such as Horizon Management, would be instructed to handle all necessary aspects of the management of the block, legal and otherwise, including hiring contractors and collecting service charges to ensure the smooth running of the block and to protect the investment of the Leaseholder's property.

Leaseholders retain control of their block as the RTM company Directors, while Horizon take the role of the Company Secretary, thereby ensuring the RTM company complies with all mandatory legal provisions and managing all aspects





## Our Final Thoughts

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Having an experienced managing agent by your side from start to finish ensures a smooth Right to Manage process. Here at Horizon Management, we are ARMA regulated, providing a fully inclusive management service, so you can be confident a block is in good hands from the initial RTM formation process to ongoing management of the residential block.

If you are interested in exercising your Right to Manage or you have an RTM company, Horizon works closely with a leasehold law firm who specialise in taking Leaseholders through the RTM process and assisting with any matters arising from the RTM's management.



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