

# ***Management functions and responsibilities***

## ***What is included***

**On the acquisition date, the RTM company takes over all of the management functions for the premises under the lease. Normally these will be the functions directly exercised by the landlord, but in some cases may have been delegated to another party to the leases or to a management company. However, no matter who is responsible for managing the property, the functions pass to the RTM company on the acquisition date.**

‘Management functions’ are defined in the legislation as ‘functions with respect to services, repairs, maintenance, improvements, insurance and management’ – that is, the delivery of all the duties reserved to the landlord under the lease. Typically these will include:

- repairs, redecorations and maintenance of the structure of the building and the common parts, including cyclical or seasonal maintenance and the maintenance of plant and facilities, lifts, central heating boilers etc;
- improvements to the building (where this is included in the lease);
- provision of services – the lighting of the common parts, heating, cleaning, grounds maintenance, caretaking and portage, warden services in the retirement sector etc;
- arranging the insurance for the building;
- levying and collection of service charges, accounting and the provision of statutory and other information;
- compliance with all statutory requirements relating to the management and fabric of the building;
- the day-to-day management of the building.

The transferred functions also include approvals and enforcement of the covenants under the lease and these are considered below.

The right to receive the ground rents does not pass to the RTM company but remains with the landlord. The landlord might, however, employ the RTM company’s managing agent to collect the ground rents for him.

## ***What is not included***

- the management of any non-residential parts of the building or any non-qualifying flats;
- functions relating to forfeiture and possession

These issues requires further explanation

### **Non-residential parts**

If the building contains non-residential or commercial units, shops or offices, garages or storage not included in the leases, then the management of these parts remains the responsibility of the landlord. It is possible, however, that disputes may arise in consequence and there is no provision in the legislation to deal with this.

For example, access to the units may be shared with the common parts of the building under the control of the RTM company, or the landlord may have concerns about the effect of any neglect of the external appearance of the building by the RTM company on the value of the commercial lettings. In other cases, the signage for a shop may be affixed to the structure of the building which lies within the responsibility of the RTM company, and the company’s consent or co-operation required for its renewal.

All these cases will need to be resolved through sensible negotiation or, in the last resort, through arbitration or the court.

## Non-qualifying flats

Where the landlord owns and lets flats in the building, other than on long leases, he will be responsible for the general management of the tenants of the flats but will be liable to the RTM company for the service charges on those flats. Where repairs need to be carried out, the landlord will be responsible for works within the flat, but where the repair relates to the structure of the building, this will generally be a matter for the RTM company.

## Forfeiture and possession

This is a specific remedy of the landlord and cannot be exercised by the RTM company. Therefore, the RTM company cannot institute forfeiture proceedings in furtherance of recovery of arrears of service charges; if the arrears cannot be recovered through other means, the company will have to seek the co-operation of the landlord.

**It is important to be clear as to the powers that are transferred. The day-to-day functions and responsibilities of the management of the building pass to the RTM company and, as a consequence, the original manager is no longer entitled to perform those functions. The landlord is still, however, the landlord under the lease and is therefore responsible for the performance of the landlord's covenants outside the general duties of management, for example, for providing quiet enjoyment and rights of support of the flats.**

In this context it should be emphasised that monies due to the landlord prior to the acquisition date, but yet not paid, remain payable to the landlord, and collectable by him, not the RTM company.

## Approvals

Most leases contain provisions requiring the consent of the landlord to certain actions by the leaseholder; these can include sub-letting, assigning the lease and making alterations to the flat. **The power to issue such approvals passes to the RTM company, although the company must keep the landlord informed.** Before granting any such approval, the RTM company must give notice to the landlord:

- for approvals relating to assignment, sub-letting, placing a charge on the unit, parting with possession, making structural alterations or improvements or changing the use of the unit, the RTM company must give **30 days notice**.
- for all other approvals, **14 days notice**.

The RTM company does not require the specific consent of the landlord, and if he does nothing, the company may grant the approval. Where the landlord objects, consent may not be granted until the landlord withdraws his objection, or the matter is decided by the Leasehold Valuation Tribunal. Where the landlord wishes to object, he must do so by notice to the RTM company and to the leaseholder concerned (and, if the case concerns a sub-letting, to the sub-tenant). Applications to the LVT may be made by any of the parties.

*There are no prescribed forms for application to the LVT for determination of the grant of an approval, but a suitable form, with explanatory notes for completion, is available from the LVT.*

The leaseholders' covenants, or obligations, under the lease become the responsibility of the RTM company; the company must ensure that all covenants are complied with and must keep the landlord informed. The company has a statutory duty to review all the leaseholders' compliance with their covenants and to take steps requiring the remedy of any breaches. Any breaches which have not been remedied must be reported to the landlord (unless he has specifically notified the RTM company that it need not do so). The landlord then may proceed to enforce the covenant through the remedy of forfeiture.

Where the lease provides a right of access into the flats by the landlord for purposes of compliance or enforcement of covenants, this right is available to the RTM company.