

Flat Management Companies

This article, the first of two, examines flat management companies and the core personnel (including their duties) required to run such a company effectively.

Purpose And Problems

A perennial problem is how to manage communal services for those living in residential blocks; tensions between the lessees and the freeholder about charges and the condition of the estate are common. In the past freeholders had little accountability to the lessees; but lessees had an open-ended commitment to pay service charges. Over the years legislation has been introduced to address these problems with varying degrees of success.

This article, in two parts, will look at the form of flat management companies, as well as some features and problems associated with them. Additionally, the article will explain how a website might simplify – and therefore reduce the cost of – routine time-consuming clerical tasks.

Running a flat management company effectively is a small-scale example of effective and simple corporate governance. The main management activities for such a company are the same as for a commercial company but with less money and no dividends akin to a mutual company.

Duties and points to consider concerning the management of such companies include:

- ◆ Directors – the main duties are fiduciary relationships, ensuring there is no secret profit, and acting in the interests of the company. Controlling agents (i.e. ensuring the actions of the accountant and manager are actively reviewed);
- ◆ Meetings – the conduct of meetings must be legal, fair and effective;
- ◆ Accounts – accounts must be published annually and must show in sufficient detail income/expenditure, assets and liabilities. Failure to do so can result in penalties for the company and possibly the directors too.
- ◆ Authorities – these will set out what the company is entitled to do, which will reflect the terms of the leases.
- ◆ Conflicts – unlike most companies, with flat companies it is often a requirement that directors can only be shareholders and shareholders must be lessees or their assignees.

All these controls need to be clearly understood by the directors.

Personnel

Flat management companies need three core members to undertake a variety of functions: the secretary, accountant and manager. Here we consider the role of two of these members.

Secretary

The main functions of the secretary are:

- ◆ ensuring that the organisation complies with all relevant rules and regulations including any relating to the ownership records;
- ◆ setting the structure, agenda, conduct and relevant papers both for board and lessee meetings;
- ◆ acting as the focal point for owners and prospective owners and their agents – for example with regard to the sale and purchase of flats; and
- ◆ acting as a sounding board for directors and lessees.

The secretary will often be responsible for maintaining membership records and other statutory books, minutes of meetings, accounting records, budget creation (long and short term), service charge billing. In addition the secretary will generally deal with changes in ownership, and any insurance administration or insurance claims.

One of the most important duties the secretary undertakes is the organisation and recording of company meetings – an anomaly to the normal rules as all directors must be a member and flat owner (there must be a potential conflict of interest to be a director!). A good agenda and good paper design, coupled with effective chairmanship, will improve the outcome of the decision-making process.

Accountant

The main functions of the accountant are:

- ◆ keeping records of receipts and payments;
- ◆ producing income and expenditure, balance sheet and cash-flow statements on a regular basis;
- ◆ preparation of draft accounts that are ready for audit;
- ◆ preparation of annual and longer term budgets for approval (covering routine and periodic expenditure, for example sinking fund items); and
- ◆ posting out and monitoring service charge receipts.

Table 1: Types of Company

Feature	Limited by shares	Limited by guarantee
Share capital	Yes	No
Share registration procedures	Yes	No
Directors, secretary and auditor	Yes	Yes
Stamp duty and share transfer forms	Yes	No
Audited accounts	Yes	Yes
Annual Return	Yes	Yes
Companies Act requirements re:		
Directors	Yes	Yes
Secretary	Yes	Yes
Meetings	Yes	Yes

(Often there will be some overlap with the secretary's functions.)

Under *section 221* of the *Companies Act (CA) 1985* directors are responsible for maintaining sufficient accounting records that show with a reasonable degree of accuracy the income, expenditure, assets and liabilities and profits/losses.

This is time consuming but vital. If the budgets are created as a result of collaboration between the secretary, accountant, manager and directors they are more likely to be robust and thus support the estate's maintenance. The budget should take account of any routine items (for example insurance, cleaning, gardening, communal lighting and security, rubbish removal, repairs and maintenance, rates and professional fees) and also non-recurring items (for example external and internal painting, roofing, pathways, floor coverings, windows, lifts etc.). The exact nature of non-recurring items will be uncertain with regards to timing and cost, but a fund should be built up over a number of years to cover potential expenditure.

The demanding of service charge is linked to the lease and underpinned by the memorandum of association of the company. This should mirror the obligations and rights of the leases. If the company ceases to exist the liability to pay service charges will continue.

One way of reducing the strain of service charges is for the company to allow monthly contribution – annual running costs by monthly standing order and sinking fund contributions, set every 3-5 years, by quarterly standing order.

Collecting service charges can be protracted but there are methods of streamlining the process – especially if the lessee has mortgaged his interest. In some circumstances the lender will pay the service charges – reserving the position of the lessee. It can involve the County Court. Establishing a firm and fair reputation pays dividends.

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The second part of this article, in the next issue of CSR, will examine the role of the manager, several common problems that occur during the running of flat management companies, and how a website can help with routine administration issues.