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SOLICITORS

Notes Relating To Tenant Management Companies

These notes are for general information only. They should not be relied upon in the absence of advice about a particular situation and no liability is accepted in the absence of our receiving formal instructions and providing formal advice.

For technical reasons flats are almost always dealt with as leasehold properties rather than freehold properties.

This means that you own the right to occupy the flat but that the freehold belongs to the landlord.

The lease contains your various rights and your various obligations e.g. to repair and to pay rent.

The lease contains the **landlord's various rights and obligations** e.g. to receive rent and usually to insure the building and perhaps to maintain the main structure.

There is a very large range of **variation between individual leases**.

In many cases, once the development has been completed and all the leases have been sold, the developer is willing to **sell the freehold to the tenants**. The most efficient way of dealing with this is for the tenants to own a limited company. The landlord transfers the freehold to that limited company.

The company is a separate legal entity from each of the tenants.

Each tenant has **one share** i.e. one vote in the control of that company.

The tenants will then decide how to run that company i.e. how the landlord is going to behave towards the tenants.

A majority of the shareholders cannot abuse their position by depriving individual tenants of their rights under their leases.

It is in everyone's interests for the company to run efficiently so that for example important repairs or insurances are not neglected or dealt with wastefully.

The company will need members to act as **Directors**.

It will need a **Company Secretary**.

The **Company Secretary** is responsible for ensuring that **company law formalities**, for example

filing any annual return with the Registrar of Companies, are complied with. There will also be matters relating to the leases and members e.g. keeping records of tenants/shareholders.

Very often there is someone who is interested in taking on that function and perfectly capable of doing so. One does not need to be a lawyer, merely to keep efficiently to some fairly simple procedures. He, or she, can take advice as necessary at the expense of the company.

Where there is no-one willing to take on that position (and able to fulfil it and there is the danger of someone being very keen to do it who turns out to be totally incompetent!) it is advisable to appoint an accountant as secretary.

The company needs a **registered office**. This could be one of the flats, particularly if one of the members is the secretary. It is important that arrangements are made, should the tenant of that flat be away for a long holiday, for notices to be brought to the attention of someone else in the company. Often the registered office is that of an accountant if an accountant has agreed to be the secretary.

Accounts will have to be drawn up annually of all the money which has been received from the tenants and the service charge arrangements (which vary from lease to lease) and to show how they have been spent and what money is held for future use.

As far as repairs are concerned, an active board of directors can employ contractors and so on to deal with these.

If the tenants do not wish to be so active, they can appoint estate agents to manage the development i.e. deal with insurance, rent and repairs from time to time for a fee.

Shareholders have to decide whether the company should build up a large **maintenance fund** for future large expenditure e.g. replacement of a roof, or deal with such matters as they arise taking the risk that some tenants would not have enough money to make their contribution.