



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AH/LCP/2015/0002
LON/00AH/LRM/2015/0019

Property : 247 Holmesdale Road, London SE5
6PR

Applicant : Holmesdale Road RTM Company
Limited

Representative : Mr S D Avery - Director

Respondent : Resolute Property Management
Limited

Representative : Glinert Davis LLP, Solicitors

Type of Applications : Commonhold and Leasehold
Reform Act 2002 – section 84(3) –
determination whether the
applicant was entitled to acquire
the right to manage; and
Section 88(4) the amount of costs
payable by the applicant

Tribunal Members : Judge John Hewitt
Mr Trevor Johnson FRICS

Date of Decision : 3 August 2015

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 the applicant was on the relevant date entitled to acquire the right to manage the subject premises; and
 - 1.2 the amount of costs payable by the applicant to the respondent pursuant to section 88 of the Act is the sum of £450.00.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing files provided to us for use at the hearing.

Procedural background

3. The subject property is a modest building originally constructed as a house and subsequently converted or adapted to comprise three self-contained flats.
4. Each of the flats has been sold off on a long lease.
5. The current lessees are said to be:

Flat 1 -	Mr Anthony Conteh
Flat 2 -	Ms Angela Iheacho
Flat 3 -	Mr Stewart Avery
6. The applicant was incorporated on 14 December 2014. The memorandum and articles of association provided to the tribunal record that the names and addresses of the subscribers were:

Stewart David Avery	-	Top Flat, 247 Holmesdale Road
Clive Seall	-	Middle Flat, 247 Holmesdale Road
7. On or about 27 March 2015 a claim notice pursuant to section 79 of the Act was given to the respondent [R1]. That notice stated that the names of the persons who were both qualifying tenants and members of the RTM company were: Stewart Avery and Angela Iheacho.

Paragraph 1 of the claim notice stated that: *“Holmesdale Road RTM Company Limited ... in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (‘the 2002 Act’) claims to acquire the right to manage 247 Holmesdale Road, South Norwood, London SE25 6PR (the ‘premises’)”*.

Paragraph 2 stated: *“The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies, on the grounds that this is a block of three long leasehold residential flats of which two of the long leaseholders wish to participate in the right to manage. There are no retail premises on this site.”*

Paragraph 3 stated: “The names of each person who is both:-
(a) The qualifying tenant of a flat contained in the premises, and
(b) A member of the company
And the address of that person’s flat is set out in Part 1 of the Schedule below.”

In summary part 1 of the schedule stated:

Stewart Avery – Flat 3

Angela Iheacho – Flat 2

8. By letter dated 30 March 2015 [R4] the respondent’s solicitors requested the applicant to provide copies of:
 - 8.1 the notice to participate (NITP) sent to the non-participating leaseholder; and
 - 8.2 the register of members.That letter was stated to be sent without admission as to the validity of the claim notice.
A follow up chaser was dated 7 April 2015 [R5].
9. By letter dated 8 April 2015 [R6] the applicant wrote to the respondent’s solicitors asserting that the respondent “has been furnished with sufficient information to make the election whether to accept or oppose the application for management of the property ...”
10. Under cover of a letter dated 16 April 2015 [R8] the respondents asserted that the claim notice was not valid and gave a counter-notice [R9] to that effect. In summary the grounds relied upon were:
 - 10.1 Paragraph 2 of the claim notice did not state in terms that specified premises were premises to which chapter 1 of the Act applied;
 - 10.2 The company has not served a NITP on all qualifying tenants who are not already members of the company or who have agreed to become a member;
 - 10.3 The company failed to produce evidence to show that the qualifying tenants specified in part 1 of the schedule to the claim notice are members of the company; and
 - 10.4 By reason of those alleged defects the company had not shown that the basic qualifying provisions found at sections 72(1), 78(1) and 79(5) have been satisfied.
11. On 27 May 2015 the tribunal received an application pursuant to section 88(4) of the Act in which the applicant sought a determination of the amount of costs payable by the applicant to the respondent.
12. Directions were given on 29 May 2015.
13. On 15 June 2015 the tribunal received an application pursuant to section 84(3) of the Act seeking a determination that the applicant had, on the relevant date, acquired the right to manage the subject premises.
14. Directions were given on 19 June 2015.

15. Both sets of directions gave notice to the parties that the tribunal proposed to determine the applications on the basis of written submissions and without an oral hearing, and would do so during week commencing 27 July 2015 unless either party requested an oral hearing.
16. The tribunal has received written submissions from each of the parties but has not received a request for an oral hearing. Accordingly the members of the tribunal met on 27 July 2015 and considered the applications.

The relevant statutory provisions

17. The relevant statutory provisions are to be found in:

Sections 72, 78, 80 and 89 of the Act – the text of those sections are set out in the schedule to this decision; and

Right to Manage (Prescribed Particulars and Forms (England) Regulations 2010 (the regulations). A copy of the prescribed form for a NITP is attached to this decision.

Has the applicant acquired the right to manage?

18. It is convenient to take this first.
19. The respondents' challenges that the applicant has acquired the right to manage and its grounds for doing so are set out in its statement of case at dated 30 June 2015. There are two. We shall take them one by one.

Failure to comply with section 80(2) of the Act

20. It is submitted that the claim notice did not contain a statement, alternatively, a valid statement, of the grounds on which it is claimed the premises to which Chapter 1 of the Act applies.

In particular the respondent relies on the requirement in section 80(2)

It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

The complaint is that paragraph 2 of the claim notice does not state that the premises consist of a self-contained building or part of a building, with or without appurtenant property, or that they contain two or more flats held by qualifying tenants or that not less than two-thirds of the flats in the premises are held by qualifying tenants.

21. Paragraph 2 of the claim notice says:

"The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies..."

Paragraph 2 goes on to assert that the premises are a block of three long leasehold residential flats of which two of long leaseholders wish to participate in the right to manage.

It goes on to state that “*there are no retail premises on this site.*”

22. We find that it can be inferred from the words used that the claim or assertion that the persons giving the claim notice are saying that the premises are premises which fall within the criteria set out in section 72(1) of the Act. They describe the premises as a block of three flats with no retail premises on site. We find that implies an assertion that the premises are a self-contained building or part thereof comprising three flats only.
23. Section 75 of the Act defines a qualifying tenant as a person who is the tenant of a flat under a long lease. Section 76 defines a long lease which, in essence, is a lease granted for a term certain exceeding 21 years. We find that the assertion in the claim notice that the premises is block of three long leasehold residential flats is a clear statement that the building contains three flats let on long leases and thus those leases are held by qualifying tenants. Given that all three flats are held by qualifying tenants, as a matter of arithmetic it is plain that the total number of flats held by qualifying tenants is not less than two-thirds of the number of flats within the premises.
24. In these circumstances we find that paragraph 2 of the subject claim notice gives to the respondent all of the information required by section 72(1) of the Act to enable the respondent to consider whether the subject premises are premises to which Part 2 Chapter 1 of the Act applies.
25. We thus reject this challenge.
26. Having made that finding we make two observations:
 - 26.1 We assume that the respondent as owner of the premises will have some familiarity with them.
 - 26.2 The respondent does not assert that the premises are not premises to which the Act applies.

Failure to comply with section 78(1) of the Act

27. There are two challenges. The respondent says first that a NITP was not given to Mr Conteh prior to the service of the claim notice. Secondly, it says that if Mr Conteh was given the NITP, a copy of which is at [R12], that is not a valid NITP and that it is defective on several grounds.
28. The applicant has provided a witness statement, apparently signed by Mr Conteh, which is in these terms:

“1. I am aware that there is an application for the Right to Manage the property situated at 247 Holmesdale Road by Holmesdale Road RTM Company Limited and that this is being opposed by the Respondent, Resolute Property Management Limited on various grounds, one being that the Applicant failed to notify me of the application in terms of section 78(1) of the Commonhold and Leasehold Reform Act 2002.

2. I hereby confirm that the Applicant did provide me with notice of the application in terms of section 78(1) of the Act and that a copy of this notification was served timeously and properly on me.

3. I further state that I fully support the Application made by the Applicant for the Right to Manage the property situated at 247 Holmesdale Road.

Dated at London on this 14th day of July 2015

[Manuscript signature – illegible]

[Typed signature] *Anthony Conteh*”

29. The respondent has not produced any evidence to gainsay what Mr Conteh and the applicant’s representative, Mr Avery, say about the giving of the NITP. The respondent has not requested an oral hearing at which it could cross-examine Mr Conteh on his witness statement.
30. In the absence of any reason to doubt the evidence produced and relied upon by the applicant we accept it. We find as a fact that Mr Conteh was given a NITP in the form at [R12]. We also find as a fact that Mr Conteh supports the applicants’ bid to acquire the right to manage the premises.
31. In paragraph 16 of its statement of case the respondent asserts that the NITP given to Mr Conteh is invalid because it does not contain all of the required information and thus does not comply with all of the requirements of the Act and of the 2010 regulations and is it not in the prescribed form.
32. In subsequent paragraphs the respondent draws to attention a number of omissions in the NITP. We need not set them all out, for reasons which appear below.
33. The respondent also submits that the several omissions to provide mandatory information do not amount to an inaccuracy which is capable of being saved by section 78 (7) of the Act. The respondent also submits that regulation 3 sets out mandatory information and ‘particulars’ which are to be provided. It thus argues that the failure to include some or all of the mandatory information will invalidate an NIPT. The respondent cites some authorities in support of its submissions. One, where the applicant was Stirling Court RTM

Company is a First-tier Tribunal (Property Chamber) decision dated 13 August 2013 which held that a NITP which did not include the 'Notes' at the foot of the prescribed form was invalid because it was a mandatory requirement for the 'Notes' to be included in a valid NITP.

The other authority relied upon was *Assethold Limited v 15 Yonge Park RTM Company Limited* [2011] UKUT 379 (LC), a case which concerned a claim notice rather than a NITP.

34. In its statement of case in answer the applicant, which is not legally represented, simply asserts that "*Proper notice was given to the leaseholder who is not a member of the RTM company...*" The statement of case did not address the particular defects relied upon by the respondent.
35. It is self-evident from a reading of the NITP given to Mr Conteh that it is not in prescribed form and it does not contain all of the information required by section 78 of the Act and by regulation 3.
36. We have considered carefully whether these several omissions in the NITP invalidate the claim notice.
37. We have considered *Assethold Limited v 13 to 24 Romside Place RTM Company Limited* [2013] UKUT 603 (LC) a decision of HHJ Huskinson given on 28 November 2013. In that case the NITP gave the wrong name for the landlord. The judge held that a valid claim notice can only be given if a valid NIPT had first been served as required by section 79(2) of the Act. He found that on the facts no such valid NITP had been served prior to the claim notice being given. Thus, he held that the qualifying tenants who gave the claim notice were not entitled to acquire the right to manage.
38. The service (or not) of an NITP was considered in *Avon Freeholds Limited v Regent Court RTM Co Limited* [2013] UKUT 0213 (LC) a decision of The President, Sir Keith Lindblom given on 5 July 2013. In that case a NITP had not been served on a qualifying tenant. Counsel for the landlord submitted that the failure to serve a NITP on the tenant of flat 16 invalidated the entire right to manage process.
39. The President undertook a detailed review of the modern jurisprudence on statutory notices. He rejected the appellant landlord's argument and said in paragraph 39:

"39. That conclusion does not depend on the statutory provisions for inviting tenants to participate in a right to manage process being categorized as directory rather than mandatory. I understood Mr Bates [counsel for the landlord] to concede that, at least in part, those provisions are directory, since they allow some latitude in the giving of notice. That concession seems to me to be correct. But in any case the right approach here, I believe, is to consider whether the statutory provisions have been substantially complied with, and whether such prejudice has been caused as to undermine the right to manage process as a whole."

40. The President went on to consider the question of prejudice. He explained, in paragraph 47, that what one ought to do is to ascertain, so far as one can, the true effects of the failure to give the notice in accordance with the statutory provisions on all those affected. The question was whether any or all of the tenants not given proper notice has been caused such prejudice through the RTM company's default as to justify denying the RTM company the right to manage. He said that each case will turn on its own particular facts.

41. In *Avon Freeholds* the President considered the facts and concluded there was no prejudice. At paragraph 56 he said:

"56. As Mrs Mossop [counsel for the RTM company] submitted, Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate. On different facts a different conclusion might be right. But in this case the respondent's omission to give the Chapmans notice at their flat in the premises was not, in my view, fatal to the process. To hold otherwise would, I think, offend the jurisprudence to which I have referred."

42. Evidently *Avon Freeholds* was not cited to HHJ Huskinson in *Assethold Ltd v 13-24 Romside Place*.

43. In *Avon Freeholds* no NITP was given. In *Assethold Ltd v 13-24 Romside Place* a NITP was given but it contained some wrong information. In the subject case before us a NITP was given, it did not contain any wrong information but it did omit some information. In his evidence Mr Conteh has said in terms that he accepted the NIPT served on him as being a notice under section 78(1)

In the case before us no evidence of prejudice to any of the parties concerned has been put before us. The respondent does not say it suffered any prejudice. Mr Conteh, the recipient of the incomplete notice does not allege any prejudice. Indeed his evidence, which we accept, is that he supports the applicant acquiring the right to manage; even though he is not a member of the applicant RTM company.

44. There is tension between the two authorities we have just cited. In one a notice giving wrong information in a NITP was held to invalidate the whole process whereas in the other the total absence of an NITP was held not to invalidate the whole process. In the case before us there is not a NITP giving wrong information, rather a NITP omitting to give certain information. It seems to us that a NITP with some omissions is closer to no NITP at all, than a NITP giving wrong information which might mislead the recipient. On balance we prefer to follow the guidance given by the President of the Upper Tribunal (Land Chamber) in *Avon Freeholds*.

45. We find that the omissions in the subject NITP do not invalidate the claim notice so that on the relevant date the applicant acquired the right to manage.

Costs

46. The respondent has made two claims to costs:

46.1 £450.00 claimed under section 88(1); and

46.2 £1,176.00 claimed under section 88(3)

47. The claim under section 88(3) falls away because those costs are only recoverable where the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage. In this case we have not dismissed such an application and thus the respondent is not entitled to the costs claimed.

48. That leaves the claim for £450 under section 88(1). The amount claimed is made up as to:

Solicitors' costs	£350.00
Company search fees	<u>£ 15.00</u>
	£365.00
VAT at 20%	<u>£ 73.00</u>
	£438.00
Land Registry fees	<u>£ 12.00</u>
Total	£450.00

49. The solicitor's costs have been calculated on the basis of a charge out rate of £196.00 for Grade C fee-earner in London 2 area.

50. The applicant denies that it was reasonable for the respondent to employ solicitors. The applicant argues that the respondent has operated in the property industry for many years and manages many residential properties. The applicant says that there were no complex issues arising in the subject application and that, in effect, it should have been dealt with in-house at no cost to the applicant.

51. We have no hesitation in rejecting the applicant's submissions. In our experience it was perfectly proper for the respondent to instruct solicitors. As will be seen from paragraphs 1-45 above the application did involve complexities largely of the applicant's own making.

52. Further the applicant was less than helpful in refusing to provide documents and information to support the acquisition of the right to manage and its letter of 8 April 2015 [R6] left the respondent no alternative but to make its own enquiries and searches. It was not, in our judgment, unreasonable for the respondent to request its solicitors to do so on its behalf. Indeed, it is unreasonable to expect a landlord to expend its own resources in dealing with claims to exercise the right to manage.

53. The quantum of costs claimed is very modest and well within what can reasonably be expected of a case such as this. The work was undertaken by a relatively junior fee-earner at a charge-out rate pretty close to that

recommended by the Senior Courts Costs Office in 2010 for a Grade C fee-earner in London Area 2.

54. We determine that the costs of £450.00 claimed by the respondent were reasonably incurred, are reasonable in amount and are payable by the applicant to the respondent.

Judge John Hewitt
3 August 2015

The Schedule – Material Statutory Provisions

Commonhold and Leasehold Reform Act 2002

72 Premises to which Chapter applies

- (1) This Chapter applies to premises if—
- (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
 - (b) they contain two or more flats held by qualifying tenants, and
 - (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
- (a) it constitutes a vertical division of the building,
 - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
 - (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
- (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
 - (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

78 Notice inviting participation

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—
- (a) is the qualifying tenant of a flat contained in the premises, but
 - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to in this Chapter as a “*notice of invitation to participate*”) must—
- (a) state that the RTM company intends to acquire the right to manage the premises,
 - (b) state the names of the members of the RTM company,
 - (c) invite the recipients of the notice to become members of the company, and

(d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

- (a) be accompanied by a copy of the [articles of association]¹ of the RTM company, or
- (b) include a statement about inspection and copying of the [articles of association]¹ of the RTM company.

(5) A statement under subsection (4)(b) must—

- (a) specify a place (in England or Wales) at which the [articles of association]¹ may be inspected,
- (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
- (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the [articles of association]¹ may be ordered, and
- (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) 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.

80 Contents of claim notice

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both—

- (a) the qualifying tenant of a flat contained in the premises, and
- (b) a member of the RTM company,

and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

- (a) the date on which it was entered into,
- (b) the term for which it was granted, and
- (c) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

88 Costs: general

(1) A RTM company is liable for reasonable costs incurred by a person who is—
(a) landlord under a lease of the whole or any part of any premises,
(b) party to such a lease otherwise than as landlord or tenant, or
(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before [the appropriate tribunal] ¹ only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by [the appropriate tribunal] ¹.

89 Costs where claim ceases

(1) This section applies where a claim notice given by a RTM company—
(a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
(b) at any time ceases to have effect by reason of any other provision of this Chapter.

(2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4) But subsection (3) does not make a person liable if—
(a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
(b) that other person has become a member of the RTM company.

(5) The reference in subsection (4) to an assignment includes—
(a) an assent by personal representatives, and
(b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825

3.— Additional content of notice of invitation to participate

(1) A notice of invitation to participate shall contain, in addition to the statements and information referred to in section 78(2)(a) to (c) of the 2002 Act (notice inviting participation), the particulars mentioned in paragraph (2).

(2) The particulars referred to in paragraph (1) are—
(a) the RTM company's registered number ¹, the address of its registered office and the names of its directors and if applicable, secretary;

- (b) the names of the landlord and any third party;
- (c) a statement that, subject to the exclusions mentioned in sub-paragraph (e), if the right to manage is acquired by the RTM company, the company will be responsible for—
 - (i) the discharge of the landlord's duties under the lease; and
 - (ii) the exercise of his powers under the lease, with respect to services, repairs, maintenance, improvements, insurance and management;
- (d) a statement that, subject to the exclusion mentioned in sub-paragraph (e)(ii), if the right to manage is acquired by the RTM company, the company may enforce untransferred tenant covenants;
- (e) a statement that, if the right to manage is acquired by the RTM company, the company will not be responsible for the discharge of the landlord's duties or the exercise of his powers under the lease—
 - (i) with respect to a matter concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant³; or
 - (ii) relating to re-entry or forfeiture;
- (f) a statement that, if the right to manage is acquired by the RTM company, the company will have functions under the statutory provisions referred to in Schedule 7 to the 2002 Act;
- (g) a statement that the RTM company intends or, as the case may be, does not intend, to appoint a managing agent; and—
 - (i) if it does so intend, a statement—
 - (aa) of the name and address of the proposed managing agent (if known); and
 - (bb) if it be the case, that the person is the landlord's managing agent;
 or
 - (ii) if it does not so intend, the qualifications or experience (if any) of the existing members of the RTM company in relation to the management of residential property;
- (h) a statement that, where the RTM company gives a claim notice, a person who is or has been a member of the company may be liable for costs incurred by the landlord and others in consequence of the notice;
- (i) a statement that, if the recipient of the notice (of invitation to participate) does not fully understand its purpose or implications, he is advised to seek professional help; and
- (j) the information provided in the notes to the form set out in Schedule 1 to these Regulations.

Status: Law In Force

**Right to Manage (Prescribed Particulars and Forms) (England)
Regulations 2010/825**

Schedule 1 FORM OF NOTICE OF INVITATION TO PARTICIPATE

This version in force from: **April 19, 2010** to **present**

(version 1 of 1)

**NOTICE OF INVITATION TO PARTICIPATE IN RIGHT TO
MANAGE**

To [name and address] (See Note 1 below)

1. **[name]* "RTM company" ("the company"), a private company limited by guarantee, of *[address of registered office]*, and of which the registered number is *[number under Companies Act 2006]*, is authorised by its articles of association to acquire and exercise the right to manage *[name of premises to which notice relates]* ("the premises"). The company intends to acquire the right to manage the premises.

2. The company's articles of association accompany this notice.

*The company's articles of association may be inspected at [address for inspection] between [specify times]. (See Note 2 below) At any time within the period of seven days beginning with the day after this notice is given, a copy of the articles of association may be ordered from [specify address] on payment of [specify fee]. (See Note 3 below)

*Delete one of these statements, as the circumstances require.

3. The names of—

- (a) the members of the company;
- (b) the company's directors; and
- (c) if the company has a secretary, the name of that person

are set out in the Schedule below.

4. The names of the landlord and of the person (if any) who is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant are [specify].

5. Subject to the exclusions mentioned in paragraph 7, if the right to manage is acquired by the company, the company will be responsible for—

- (a) the discharge of the landlord's duties under the lease; and
- (b) the exercise of his powers under the lease,

with respect to services, repairs, maintenance, improvements, insurance and management.

6. Subject to the exclusion mentioned in paragraph 7(b), if the right to manage is acquired by the company, the company may enforce untransferred tenant covenants. (See Note 4 below)

7. If the right to manage is acquired by the company, the company will not be responsible for the discharge of the landlord's duties or the exercise of his powers under the lease—

- (a) with respect to a matter concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant; or
- (b) relating to re-entry or forfeiture.

8. If the right to manage is acquired by the company, the company will have functions under the statutory provisions referred to in Schedule 7 to the Commonhold and Leasehold Reform Act 2002. (See Note 5 below)

9. *The company intends to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985. [If known, give the name and address of the proposed managing agent here. If that person is the current managing agent, that fact must also be stated here.]

*The company does not intend to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985. [If any existing member of the company has qualifications or experience in relation to the management of residential property, give details in the Schedule below.]

*Delete one of these statements, as the circumstances require.

10. If the company gives notice of its claim to acquire the right to manage the premises (a "claim notice"), a person who is or has been a member of the company may be liable for costs incurred by the landlord and others in consequence of the claim notice. (See Note 6 below)

11. You are invited to become a member of the company. (See Note 7 below)

12. If you do not fully understand the purpose or implications of this notice you are advised to seek professional help.

SCHEDULE

The names of the members of the company are: *[state names of company members]*

The names of the company's directors are: *[state directors' names]*

[If applicable] The name of the company's secretary is: *[state company secretary's name]*

[If applicable; see the second alternative in paragraph 9 above] The following member[s] of the company *[has][have]* qualifications or experience in relation to the management of residential property: *[give details]*

Signed by authority of the company,

[Signature of authorised member or officer]

[Insert date]

NOTES

1. The notice inviting participation must be sent to each person who is at the time the notice is given a qualifying tenant of a flat in the premises but who is not already, and has not agreed to become, a member of the company. A qualifying tenant is defined in section 75 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

2. The specified times must be periods of at least 2 hours on each of at least 3 days (including a Saturday or Sunday or both) within the 7 days beginning with the day following that on which the notice is given.

3. The ordering facility must be available throughout the 7 day period referred to in Note 2. The fee must not exceed the reasonable cost of providing the ordered copy.

4. An untransferred tenant covenant is a covenant in a tenant's lease that he must comply with, but which can be enforced by the company only by virtue of section 100 of the 2002 Act.

5. The functions relate to matters such as repairing obligations, administration and service charges, and information to be furnished to tenants. Details may be obtained from the RTM company.

6. If the claim notice is at any time withdrawn, deemed to be withdrawn or otherwise ceases to have effect, each person who is or has been a member of the company is liable (except in the circumstances mentioned at the end of this note) for reasonable costs incurred by—

- (a) the landlord,
- (b) any person who is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises to which this notice relates, or any premises containing or contained in the premises to which this notice relates,

in consequence of the claim notice.

A current or former member of the company is liable both jointly with the company and every other person who is or has been a member of the company, and individually. However, a former member is not liable if he has assigned the lease by virtue of which he was a qualifying tenant to another person and that other person has become a member of the company.

7. All qualifying tenants of flats contained in the premises are entitled to be members. Landlords under leases of the whole or any part of the premises are also entitled to be members, but only once the right to manage has been acquired by the company. An

application for membership may be made in accordance with the company's articles of association which, if they do not accompany this notice, may be inspected as mentioned in paragraph 2 of the notice.

8. If the right to manage is acquired by the company, the company must report to any person who is landlord under a lease of the whole or any part of premises any failure to comply with any tenant covenant of the lease unless, within the period of three months beginning with the day on which the failure to comply comes to the attention of the company—

- (a) the failure has been remedied,
- (b) reasonable compensation has been paid in respect of the failure, or
- (c) the landlord has notified the company that it need not report to him failures of the description of the failure concerned.

9. If the right to manage is acquired by the company, management functions of a person who is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant will become functions of the company. The company will be responsible for the discharge of that person's duties under the lease and the exercise of his powers under the lease, with respect to services, repairs, maintenance, improvements, insurance and management. However, the company will not be responsible for matters concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant, or relating to re-entry or forfeiture.

10. If the right to manage is acquired by the company, the company will be responsible for the exercise of the powers relating to the grant of approvals to a tenant under the lease, but will not be responsible for the exercise of those powers in relation to an approval concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant.

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Subject: Real property

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