

ARHM GOOD PRACTICE NOTE

VARIATION TO CUSTOM AND PRACTICE

The ARHM's code of practice (Chapter 7) outlines how the variation of custom and practice on schemes should be administered. This Good Practice Note is an additional explanation to ARHM members about how to comply with the code.

Custom and practice relates to services or the use of facilities that are allowed within the terms of the lease but for which it is not expressly determined how it is delivered.

Custom and practice will vary depending on the scheme, but some examples include the scheme manager service, the emergency alarm system, the link to a monitoring centre and the use of the communal facilities.

The manager should provide details about custom and practice at the scheme or property and these should be made available to leaseholders without the need for them to request the information.

The Lease will override any Ballot. If a service is a requirement in a lease, for example if the lease requires a Resident Scheme Manager, then the ARHM does not recommend the use of a ballot. Leases can only be varied by mutual consent, or by reference to a tribunal or court, and the procedures for variation of leases by reference to a tribunal are set out in sections 35-40 of the Landlord and Tenant Act 1987.

The procedure in the Code is one of good practice for the manager or landlord to use whenever variation of custom or practice is proposed. It is not a procedure that lessees can demand of the manager to use if the manager has no proposal to make any change.

Ballot Papers

The ballot paper should contain the motion to be considered, the majority required to pass the motion, who will count the ballot and how the count will take place.

In addition the ARHM recommends:-

- The ballot papers should contain the name and address of the manager.
- The name of the scheme that the ballot relates to
- The date that the ballot will start.
- The date that the period for votes will end as well as a statement that a minimum period of 30 days shall be allowed for votes to be cast.

The date for the start of the period allowed for votes should be the date of the meeting called to inform and explain the proposals or any later date; it should not be any date before the meeting.

Multiple Choice Proposals

The procedure explained in the code of practice is not appropriate for multiple choice proposals. An example of a multiple choice proposal might be one to retain a resident scheme manager, move to a visiting manager, or reduce the number of hours of the scheme manager.

The ARHM does not recommend managers use the ballot procedure for such proposals. A more conventional ballot, a show of hands at a meeting or in-house voting slips is recommended to arrive at the option with the most support. That one option can then be put to the secret ballot using the procedure set out in the code.

The Meeting

Documents explaining proposals should be distributed prior to the meeting. Those documents should always explain the pros and cons of each option. There is always the option of the change and of retaining the status quo.

Counting the Ballot Papers

The following organisations can count the ballots for ARHM's members:-

AIMS – Age Concern's impartial service for people living or working in private retirement housing in England and Wales. Contact 020 8705 7465 or aims@ace.org-uk or AIMS, Astral House, 1268 London Road, London, SW16 4ER.

Electoral Reform Service - a subsidiary of the Electoral Reform Society offers a full range of postal, internet and telephone voting option. Contact 0208 365 8909 or enquiries@electoralreform.co.uk or Electoral Reform Services, The Election Centre, 33 Clarendon Road, London, NW8 0NW.

Interpreting the Results of the Ballot

The ARHM code is very specific.

You may only vary a custom or practice where you achieve a result in favour of the proposal of at least 66% of those voting (where at least 51% of those eligible to vote did so), and the number of votes counted against the motion are not more than 25% of those leaseholders eligible to vote.

Some worked examples are set out below:-

EXAMPLE 1

There are 48 units on a scheme.

You will always need at least 51% of those 48 eligible to vote, which means at least 25 units must take part in the vote. If you don't get 25 units voting then the motion is not carried

Then, of those voting, at least 66% must be in favour. So, if for example 45 units vote, then 30 (66% of 45) need to be in favour for the motion to be carried, so long as no more than 25% of those eligible to vote do not vote against it.

So, if more than 25% of those eligible to vote, in this case 13, vote against it, the motion will not be carried regardless of how many vote in favour.

EXAMPLE 2

There are 30 units on a scheme.

You will always need at least 51% of those 30 eligible votes to carry the motion, which means at least 16 votes.

So, if only 20 vote and 12 are in favour then the motion is not carried as 66% of those voting did not vote in favour.

If 30 vote and 21 are in favour but 9 are against, the motion is not carried as those against the motion are more than 25% of those eligible to vote.

If 25 vote and 18 are in favour and 7 against the motion is carried as at least 66% of those voting voted in favour, and less than 25% of those eligible to vote voted against.

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