

# Foreword



*Jocelyn Davies AM  
Deputy Minister for Housing and Regeneration*

Private leasehold retirement housing represents an important sector of the property market. Older people who wish to live independent lives, but who also seek some additional support and security, often look to this form of accommodation to meet their needs.

This sector is specifically designed for older people and is managed by specialist management companies and housing associations. They take responsibility for the external maintenance of the properties and the common parts, for the provision of a range of other services, often including alarm systems and a resident scheme manager or warden.

The ARHM Code of Practice for Private Retirement Housing (Wales) is designed to promote good management practice, and also sets out the statutory obligations that apply to the management of leasehold properties as well as other additional requirements with which managers should comply. By following the code, managers can ensure that they provide a professional, effective and responsive service to residents, and where any difficulties, disputes or problems arise they can be dealt with swiftly and fairly.

The Commonhold and Leasehold Reform Act 2002 (the 2002 Act) includes the most comprehensive package of leasehold reforms to date, improving and strengthening leaseholders' rights, choices and control in respect of the management of their homes, and of the service charges that they are asked to pay towards the upkeep of the property.

I should like to take this opportunity of thanking the ARHM for producing this revised code, which like its predecessor, is destined to play an important role in improving management practices in the sector. I warmly commend it to all managers of retirement housing in the hope that it will continue to be closely studied and followed.

*Jocelyn Davies*



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# Introduction, Definitions and Abbreviations

This Code of Practice has been prepared by the Association of Retirement Housing Managers (ARHM) to promote best practice in the management of leasehold residential properties which are specifically designed and designated for retired older people, sometimes called private retirement housing. In most cases, this Code will also apply to the management of freehold bungalows and houses, which have been specifically designed and designated for retired older people. In all cases, the owner will be obliged to pay a service charge in return for a package of management services provided by the manager/landlord.

## Application of the Code

This Code applies in Wales only. It does not apply to rented sheltered housing but it does apply to private retirement housing whether managed by private companies or registered social landlords.

## Structure

In this Code the word **‘must’** is used to indicate a statutory legal requirement or a requirement of common law and the word **‘should’** to indicate recommended or best practice. Such recommended best practice cannot, however, override the provisions of the lease or other written agreement between the landlord and leaseholder.

Where the word **‘must’** is accompanied by a reference to ‘contract law’ in the margin, it indicates a provision common to most leases or written agreements. Where it is not, however, a provision of the lease, that ‘requirement’ becomes recommended or best practice.

It is assumed in using **‘must’** for the purposes of this code that the manager is also the landlord except where the Code expressly advises otherwise.

Where a statutory legal requirement appears in the Code it is accompanied in the margin by a reference to the provision of the relevant Act.

This Code is directed towards management organisations, including resident management and right to manage companies, who manage retirement housing developments, and these organisations are referred to as ‘managers’ or ‘you’ throughout this Code. The word ‘landlord’ is used to denote the person or organisation owning the freehold or superior leasehold interest in the property who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The manager and the landlord could be, and for private retirement housing often are, one and the same.

## Enforcement

It is a condition of membership of the ARHM that members accept the Code

and follow its requirements (subject to any existing restrictions in individual leases). Failure to follow the requirements of the Code will render members liable to penalties or expulsion.

## The Commonhold and Leasehold Reform Act 2002

The 2002 Act received Royal Assent on 1 May 2002 and gives leaseholders additional and improved legal rights in relation to their homes. It includes a right to manage, protection against unreasonable administration charges and strong safeguards against the use of forfeiture.

The 2002 Act did not have effect immediately and the leasehold provisions are being brought into force in stages from July 2002, with associated regulations where required. This Code contains references to the relevant sections of the 2002 Act in force. The relevant sections of the 2002 Act that are not commenced have been summarised in Appendix 4.

## The Code and the Choices of Leaseholders

With the increase of resident management companies and greater participation of leaseholders in management, it is leaseholders themselves who can often decide the level of service and standards they want, subject to the law and the terms of the leases. There may be occasions where the leaseholders with good reason do not want a manager to follow all of the requirements of this Code.

In such cases, it would be acceptable for a manager to depart from the recommended best practice (the “**shoulds**”), but never the legal requirements (the “**musts**”) or from the terms of the relevant leases. However, managers should only depart from the Code if a consultation exercise has been undertaken with leaseholders and a vote taken in accordance with the requirements in Chapter 6 of this Code.

## Monitoring

The ARHM will monitor the effectiveness of this Code and will periodically review it. Written comments on the content of the Code are welcome. ARHM members are subject to audits to check their compliance with the Code and the ARHM operates a complaints procedure that may be used by lessees of its members if they have exhausted the complaints procedure of the member concerned.

## Acknowledgements

The Code has been the subject of widespread consultation with housing, professional and residents’ organisations as well as with ARHM member organisations. The Association is most grateful for the advice and support it has received in the preparation of this Code.

## **Disclaimer**

The Code only applies to properties in Wales and does not purport to be a comprehensive statement of law. No liability can be accepted by the ARHM for errors or omissions or for any loss or damage sustained by anyone acting in accordance with this Code. If readers are in any doubt about their rights or obligations, they should seek specialist advice from organisations like AIMS or LEASE or consult a solicitor.

# Definitions

In this Code the following definitions apply:

## Contract Law

The law which binds parties to a contract (or lease) to meet the conditions of that contract (or lease). In this Code, where the word '**must**' in the text is accompanied by a reference to 'contract law' in the margin, this indicates a provision common to most leases and therefore a 'contract law' requirement. Where it is not, however, a provision of a particular lease, that 'requirement' becomes recommended or best practice.

## Gender etc.

References to 'he', 'his' or 'him' cover also 'she' or 'her' and may also include the plural, and words in the plural usually include the singular.

## Landlord

The landlord is the person or organisation owning the freehold or superior leasehold interest in the property or scheme who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord may or may not be the manager. The landlord may also be called the 'lessor' or 'freeholder' but in this Code the term 'landlord' is used.

## Lease

A written, witnessed, legal document which transfers from the landlord to the leaseholder the exclusive possession (i.e. the leasehold) of certain property for a fixed period of time (such as 99 or 125 years). The terms of the lease fix the rights of the landlord and leaseholder and cannot usually be changed without the agreement of both, or an application to a Leasehold Valuation Tribunal for a variation. If a service charge or rent is to be paid they **must** be provided for by the lease.

## Leaseholder

The person who in law has the right to exclusive possession of property under a lease. A leaseholder may also be called a 'lessee', or 'owner' or 'tenant' but in this Code the term leaseholder is used exclusively. In retirement housing the leaseholder is usually the resident of the property but need not be. For example, the son or daughter may take a lease of a property so that an elderly parent can live there.

## Leaseholders' Handbook

The Leaseholders' Handbook is the document that contains essential information for purchasers and leaseholders of retirement housing, the contents of which are set out in Appendix One. The handbook fulfils the requirements of the Purchasers' Information Pack required by the National House Building Council Sheltered Housing Code.

## Manager

The person or organisation having day-to-day control of the management of the retirement estate or development is called the 'manager'. This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, a group of flat owners who have formed themselves into a formal management or maintenance company, or a company formed to exercise the right to manage. Where the manager levies a charge for costs, overheads etc, it is called a management fee in this Code (see Chapter 3). In the text the manager is also referred to as 'you'. The manager is different to the "Scheme Manager" as defined below. The manager is a person or organisation responsible for the provision of all the services under the lease. The Scheme Manager provides support to residents and assists in the management of the scheme, and is often called the warden or house manager.

## Registered Social Landlord

Registered Social Landlords are organisations that build and manage residential property and which are registered with the National Assembly for Wales. They are often called housing associations.

A body is eligible for registration with the Welsh Assembly Government as a social landlord pursuant to the Housing Act 1996 if it is:

- a) a registered charity that is a housing association; or
- b) a society registered under the Industrial and Provident Societies Act 1965 that satisfies the conditions set out in section 2(2) of the Housing Act 1996; or
- c) a company registered under the Companies Act 1985 that satisfies the conditions referred to in 'b'.

## Reserve Fund

A fund created to build up sums of money that can be used to pay for large items of expenditure in the scheme. Sometimes also called contingency or sinking funds. Such funds are raised either by contributions from service charges, or by the operation of a formula in leases which provides for a fixed deduction from price to be made on any sale of a relevant dwelling. Reserve funds may become trust funds when raised from service charges.

## **Resident**

The person who actually occupies the dwelling who may or may not be the leaseholder.

## **Residents' Association**

A group of tenants, leaseholders or occupiers with or without a formal constitution or corporate status is called a residents' association.

## **Recognised Tenants' Association**

There is also a legal term, recognised tenants' association, which applies when a tenants' or residents' association successfully applies to the landlord or the rent assessment panel to become formally recognised. This confers extra rights which are set out in Chapter 12 of this Code.

## **Retirement Housing**

Housing which is purpose built or converted exclusively for sale to older people with a package of estate management services and which consists of grouped, self-contained accommodation with an emergency alarm, usually with communal facilities and normally with a scheme manager. It is often called private sheltered housing.

## **Scheme**

The term used for a group of retirement dwellings with a package of estate management services, also known as a development, estate or facility.

## **Scheme Manager**

The person that provides support to residents, assists in the management of the scheme, and responds to emergency alarm calls. This person may also be called the warden, house manager, estate manager or resident secretary. The role may be a residential or non-residential one.

## **Service Charge**

An amount paid or payable by a leaseholder as part of or in addition to rent in respect of services, repairs, maintenance, improvements, insurance or costs of management. The amount may vary according to the costs incurred or to be incurred and is normally a fixed proportion expressed in the lease of the total costs of running the scheme. Service charge for the purpose of the Landlord and Tenant Acts is defined in S.18 of the 1985 Act (as amended by S.150 and Schedule 9 of the 2002 Act).

# Abbreviations

The following standard abbreviations are used throughout this Code.

The '1985 Act' means the Landlord and Tenant Act 1985(c.70)

The '1987 Act' means the Landlord and Tenant Act 1987(c.31).

The '1993 Act' means the Leasehold Reform, Housing and Urban Development Act 1993(c.28).

The '1996 Act' means the Housing Act 1996 (c.52).

The '2002 Act' means the Commonhold and Leasehold Reform Act 2002(c.15).

'AIMS' means the Advice, Information and Mediation Service, a part of Age Concern.

'ARHM' means the Association of Retirement Housing Managers.

'LEASE' means the Leasehold Advisory Service.

'LVT' means a Leasehold Valuation Tribunal.

'RSL' means a registered social landlord.

**Any references to legislation in this Code are references as amended at the time that the Code is published and to any equivalent statutory provision that applies in Wales only.**

# 1.0

## Service Charges - Budgeting and Collection

### Leaseholders' Rights Regarding Service Charges

S.19 & S.27A of 1985 Act as amended by Sch 14 to 2002 Act

1.1

Managers **must** ensure that service charges are reasonable. A leaseholder (or a landlord) may ask a LVT to make a determination about whether a service charge is payable, including whether costs incurred for services, repairs, maintenance, improvements, insurance or management have been reasonably incurred or whether services or works are of a reasonable standard.

S.27A of 1985 Act inserted by S.155 of 2002 Act

1.2

The LVT also has the power to determine (on the application of the landlord or leaseholder) whether, if costs were to be incurred for services, repairs, maintenance, improvements, insurance or management, they would be reasonable, or whether services or works proposed would be of a reasonable standard, or what amount payable in advance is reasonable before costs are incurred.

S.27A of 1985 Act inserted by S.155 of 2002 Act

1.3

In determining a matter LVT's can decide whether a service charge is payable (or would be payable if costs were incurred), and, if it is, as to the person by whom it is payable; the person to whom it is payable; the amount which is payable; the date at which or by which it is payable; and the manner in which it is payable.

S.27A of 1985 Act inserted by S.155 of 2002 Act

1.4

Leaseholders may make an application to a LVT to challenge a service charge whether payment of that charge has already occurred or not. However an application may not be made where the matter in dispute has already been admitted or agreed by the leaseholder, or has been or is to be referred to arbitration using a post-dispute arbitration agreement, or has been determined by a court or by an arbitral tribunal following a post-dispute arbitration agreement. But the leaseholder is not taken to have agreed or admitted any matter in dispute because a payment of the service charge has already been made.

S.155 of & Sch 11 to 2002 Act

1.5

Leaseholders may also apply to a LVT for a determination about administration charges arising out of a lease that are not included in a service charge. See paragraphs 3.14-3.17 of this Code.

### Budgeting

1.6

Managers **should** use proper care in the preparation of budgets using the best information available. Budgets **should** be

reasonable taking into account such factors as the age and condition of the building and plant, and maintenance and other works anticipated. You **should** seek quotations or estimates from contractors wherever possible before fixing the budget.

1.7

Managers **must not** give artificially low forecasts of service charges. In the case of new developments where warranties may replace contracts in the initial period, you **should** prepare the budget on the assumption of a normal full year's costs.

1.8

Managers **should** consult leaseholders and residents' associations on budgets, normally once a year, prior to any review of or increase or decrease in the service charge. You **should** hold an annual budget meeting at a time and place convenient to leaseholders, to which all leaseholders **should** be invited. You **should** give a minimum of 2 weeks notice of the meeting and send copies of the proposed budget to arrive at least 7 days in advance of the meeting. You **should** confirm in writing any commitments or budget changes made at the meeting (see also paragraphs 1.10 to 1.13 of this Code).

1.9

Managers **should** present budgets in a standard format compatible with the format of annual accounts to allow ease of comparison by leaseholders.

1.10

Managers **should** explain to leaseholders any significant variations between the current level of expenditure and the budget for the year following and give reasons.

## Collection of Service Charges and Ground Rents

1.11

The terms of the lease will govern the frequency and method of service charge and ground rent collection and payment.

S.166 of 2002 Act

1.12

Any demand for a ground rent **must** be done so in a specific manner prescribed by law. S166 of the 2002 Act and the Landlord and Tenant (Notice of Rent) (Wales) Regulations 2005 no. 1355 (W.103) refers. If a notice is not served the leaseholder is not liable to pay the ground rent. The notice **must** specify, amongst other things, the amount of rent due, the period to which the demand for rent relates, the name of the landlord and to whom the rent is payable, and the date on which it is payable. The notice **must** also contain information for leaseholders and landlords in the form of notes as set out in the regulations.

S.166 of 2002 Act

1.13

The date on which the ground rent is payable **must not** be less than 30 days or more than 60 days -

- a) after the day on which the notice is given; or
- b) before the date on which it would be due as set out in the lease.

1.14

If the date that the ground rent is payable (because of the 30

days rule in paragraph 1.13 above) is different from the date in accordance with the lease, then the notice **must** also include the date on which the ground rent would have been payable according to the lease.

S.166 of 2002 Act

**1.15**

If the date on which the ground rent is payable by notice is after that on which it would have been payable according to the lease, because of the need to give at least 30 days notice, then any provisions in the lease relating to late or non-payment have effect from the date payable by notice.

S.47 of 1987 Act amended by Sch. 11 Part 2 of 2002 Act

**1.16**

Managers **must** give the name and address of the landlord on any written demand for service charges, ground rents or administration charges (see paragraph 3.14 of this Code).

S.48 of 1987 Act

**1.17**

Managers **must** also give a name and address in Wales or England for the service of notices on the landlord.

**1.18**

Once a year upon request, managers **should** make available to any leaseholder a statement of service and other charges demanded of and paid by him.

## Debt Recovery

**1.19**

Managers **should** have systems in place to ensure the regular monitoring of payments due from leaseholders. Prompt action **should** be taken to inform leaseholders of amounts outstanding and to agree arrangements for their collection.

**1.20**

Managers **should** offer guidance on the range of state benefits available to help meet service charges and/or indicate where further advice on benefits and debt counselling can be obtained and provide the name and address of agencies concerned.

**1.21**

Managers **should** offer to meet with a leaseholder who owes charges to explore options for repayment before taking legal action. You **should not** take legal action without giving adequate written warning of your intention; such warning to include a suggestion that leaseholders seek advice on the consequences of non-payment. Consideration **should** also be given to resolving the matter through alternative dispute resolution rather than through the courts.

## Limits on the Use of Forfeiture

**1.22**

Managers **should** seek to solve problems of non-payment of ground rent and service charges without recourse to forfeiture and only use forfeiture as a last resort, after other attempts to remedy the breach have failed.

**1.23**

Managers **should** notify any known mortgagee of any intention to take action to forfeit the lease.

**1.24**

Forfeiture is not available to recover small debts consisting of rent, service charges or administration charges (or combinations of them) where the amount does not exceed £350 unless all or any part of that debt has been outstanding for more than 3 years.

**1.25**

Unless the leaseholder has admitted that the charge is payable, a landlord **must not** exercise a right of re-entry or forfeiture for failure to pay a service charge or administration charge (or for any other breach of a condition of a lease), unless it has been finally determined by a LVT or court that a breach has occurred, and the amount of the charge is payable. A landlord may not serve a notice of forfeiture until after a period of 14 days beginning with the day after the final determination by a LVT or a court.

**1.26**

Where forfeiture action is taken or completed, the landlord **should** repay the value of the forfeited lease to the former leaseholder and others with a legal interest in the lease, subject to deduction of all costs and expenses incurred in taking forfeiture action and in the subsequent sale. These may include, but are not limited to, legal and management costs in taking forfeiture action had the lease not been forfeited up to the commencement of a new lease, costs of marketing and resale of the property, and other costs arising during the period of the lease or upon resale.

## Costs of Services for Unsold Homes Prior to Their First Sale

**1.27**

Managers **should** ensure that no contribution is sought from leaseholders to meet service costs attributable to unsold homes prior to the first sale of those units. Appropriate contributions to services charges, including reserve funds, for unsold homes prior to first sale **should** be sought from the developer of a scheme. Managers **should not** enter into a management agreement that unfairly restricts contributions from developers for the cost of services for unsold homes prior to their first sale.

# 2.0

Contract Law

## Accounting for Service Charges

2.1

Managers **must** refer to the individual leases which will often set out the way in which service charges are to be accounted for, the costs which can be recovered and the periods for which accounts are to be prepared.

### Trust Funds

2.2

S.42 of 1987 Act

Where the landlord is not an RSL, managers **must** ensure that all contributions to variable service charges including reserve funds are held in accordance with the trusts established under S.42 of the 1987 Act.

2.3

Where the landlord is an RSL, reserve fund payments made by leaseholders **should** be held in accordance with the lease.

2.4

S.42 of 1987 Act

Where the landlord is an RSL, leaseholders of each scheme **should** also be offered the option to request that service charge monies for each scheme be held in trust.

2.5

In the absence of a formal trust deed, the trustees are the landlord or the person to whom service charges are payable under the lease (this will not necessarily be the manager). The trustees **must** ensure that service charge payments are kept separate from the landlord's and the manager's own money and are only used to meet the expenses for which they are paid.

2.6

Trustee Act 2000 (c.29) .  
S.42 of 1987 Act.  
The Service Charge Contributions (Authorised Investments) Order S1 1988 No. 1284 , amended by Financial Services & Markets Act 2000 (Consequential Amendments & Repeals) Order SI No.3649 .

Trustees **must** invest trust funds in accordance with the terms of the trust, the Trustee Act 2000 or an order made under the 1987 Act (which enables funds to be invested in a deposit account with certain banks or in share or deposit accounts with a building society).

2.7

Income arising from the investment of contributions will normally be taxed and managers **should** seek professional advice on such matters. Any investment income accrued on service charge income held in trust is subject to income tax at the rate applicable to trusts.

### Bank Accounts

2.8

S.42 of 1987 Act

Where the landlord is not an RSL managers **must** open one or more accounts to hold service charge monies separate from other money.

2.9

Where the landlord is an RSL managers **should** open one or more accounts to hold service charge monies separate from other money.

**2.10** These accounts **should** be:

- a) held at an approved bank. i.e. an authorised institution within the meaning of the Building Societies Act 1986 or a body named in the 1988 Service Charge Contributions (Authorised Investments) Order as amended by Part 9 of the Financial Services and Markets Act 2000.
- b) in the name of the manager and have, where appropriate, the description 'trust account' in its title (or notify the bank in writing and obtain confirmation from the bank that it is trust money).

**2.11** You **should** tell those whose money you are holding:

- a) the name and address of the institution where their money is held;
- b) the account number and name;
- c) whether or not it is an interest bearing account;
- d) the withdrawal notice period and any restrictions on withdrawals. If not immediately accessible, such restrictions will require the leaseholders' approval in writing if monies are held in trust.

This information may be conveniently given when distributing accounts.

**2.12** Managers **should** arrange for residents' funds for each scheme to be separately identifiable and ensure that a reasonable rate of interest is paid taking into account all relevant factors e.g. prudent investment and accessibility of funds.

## Right to a Summary of Relevant Costs

**2.13** Managers **must** provide for a leaseholder or the secretary of a recognised tenants' association, on request, a summary of relevant costs (as defined by S.18 of the 1985 Act) incurred during the last accounting year, or where accounts are not kept on that basis, the 12 months before the request.

**2.14** The summary **must** cover all costs incurred by the landlord for which the service charge is payable and **should** show how they are reflected or will be reflected in demands for service charges. The cost of preparation of the summary is regarded as properly chargeable to the service charge account where the lease so allows.

**2.15** The summary **must** distinguish between items:

- For which no payment has been demanded of the landlord within the period to which the summary relates.

- For which payment has been demanded of the landlord but not paid within that period.
- For which the landlord has paid within that period.

**2.16** The summary **must** also specify the total of any money standing to the credit of the leaseholders paying these charges at the end of the period and any costs which relate to works for which improvement grants have been or will be paid and show how they have been reflected in the service charge demands.

S.21 of 1985 Act

**2.17** If requested, managers **must** supply the summary within one month of the leaseholder's request or within 6 months of the end of the period covered by the summary, whichever is the later.

S.28 of 1985 Act

**2.18** If the building has more than four dwellings, the summary **must** be certified by a qualified accountant as a fair summary sufficiently supported by accounts, receipts and other documents. A qualified accountant **must** belong to one of the recognised accountancy bodies and may not be an officer or employee of the landlord or managing agent or, if the landlord is a company, of any associated company.

## Regular Statements of Account

**2.19** Managers **should** supply to all leaseholders regular statements of account within six months of the end of each accounting period or earlier if required by the lease.

**2.20** Managers **should** present the budget and statement of account in a similar form to facilitate comparisons by leaseholders.

**2.21** The regular statements of account **should** include an income and expenditure account for each scheme and a balance sheet showing any reserve funds held together with the aggregate amount standing to the credit or debit of the scheme.

S.20B of 1985 Act

**2.22** Any demand for payment of a service charge where the relevant costs were incurred more than 18 months before the demand will not be recoverable unless managers have notified the leaseholder in writing of the costs (towards which the leaseholder is required to contribute under the terms of the lease) within 18 months of incurring those costs, and that he is required to contribute to them under the terms of his lease. Costs are incurred at the time the expenditure is committed.

## Certification or Audit of Accounts

**2.23** Managers **should** have service charge accounts audited by a suitably qualified accountant (as defined by S28 1985 Act) unless the cost of that audit is irrecoverable under the terms of the lease.

**2.24** The auditor **should** be required to report whether in the auditor's opinion the accounts represent a fair summary of costs, show how the costs are reflected in service charges and are sufficiently supported by accounts, receipts and other documents which have been produced to him. Managers **should** obtain a statement from the auditor that explains the nature and limitation of the checks that have been undertaken.

**2.25** Managers **should** be prepared to answer auditor's questions on significant items of expenditure as well as on variations between estimated and actual expenditure and other related matters.

Contract Law

**2.26** Where the lease calls for a certificate signed by the landlord, the landlord's auditors or accountants, managers **must** provide this to the leaseholder.

**2.27** Where the cost of an audit is not recoverable under the terms of the lease the manager **should** arrange for the statement of accounts to be certified by a qualified accountant.

## Right to Inspect Supporting Documents to Accounts

S.22 of 1985 Act

**2.28** If requested by a leaseholder or the secretary of a recognised tenants' association within six months of their receiving a summary of costs (see paragraph 2.13 above), managers **must** provide an opportunity for the inspection of the accounts, receipts and other supporting documents. You **must not** charge the leaseholder for the inspection and the leaseholder has a right to take copies or extracts from any documents. The cost of the inspection can be included in the cost of management.

S.22 of 1985 Act

**2.29** Any charge made for providing copies of any documents or having a member of your staff in attendance for that purpose **must** be reasonable. Managers **should** inform leaseholders of any charges for this service in advance.

S.22 of 1985 Act

**2.30** Managers **must** respond to the leaseholder's request in writing within one month and **must** then allow the leaseholder an opportunity to inspect the accounts, receipts and other supporting documents during the next 2 months.

S.23 of 1985 Act

**2.31** Intermediate landlords who do not possess all the relevant information or documents necessary to comply with the requirements of paragraph 2.13 or 2.28 **must** make a written request to their landlord for this information.

S.25 of 1985 Act

**2.32** It is a criminal offence to refuse or ignore a request for a summary of costs or for facilities to inspect documents under S.21 and S.22 of the 1985 Act.

2.33

Managers **should** arrange on an annual basis, if requested, for all invoices and receipts supporting the latest accounts to be made available at a convenient time for inspection by leaseholders at their scheme.

## Treatment of Surpluses and Deficits

S.19 (2) of 1985 Act

2.34

Where service charges are payable in advance of the costs being incurred they **must** be reasonable, and where a surplus exists after the costs have been incurred, managers **must** repay that surplus to leaseholders or credit it against subsequent charges. If the lease is specific about which of these two options **must** be followed then the manager **must** follow the lease.

2.35

Managers **should** explain to leaseholders in written form how deficits will be recovered, and **should not** invoice leaseholders for a deficit until audited accounts have been distributed.

## The Right to Management Audit

S.76 of 1993 Act

2.36

Two thirds or more leaseholders of a scheme that consist of or include 3 or more dwellings have the legal right to have a management audit carried out by a suitably qualified person. Where the relevant premises consist of only two dwellings, either or both of the leaseholders have the right to have such an audit.

S.78 & 79 of 1993 Act

2.37

This legal right includes the right to have a qualified accountant or qualified surveyor appointed by leaseholders check the accounts and supporting documentation provided by the manager. However, it also goes further and allows an audit of whether management functions are being discharged in an efficient and effective manner.

2.38

The manager **should** allow the auditor to inspect the accounts, receipts or other relevant documents, and take copies of them; or the manager shall take copies and either send them to the auditor or leave them for collection, whichever the auditor prefers.

2.39

The purpose of the right is to help leaseholders who are dissatisfied with the manager to have professional help to make a fuller assessment of the manager.

S.80 of 1993 Act

2.40

Leaseholders exercise their legal right to have a management audit carried out on their behalf by having their auditor give a notice signed by each leaseholder (on whose behalf it is given) to their landlord. The notice **should** specify any documents required to be inspected or copied and any communal parts to be inspected, as well as give the full name of each of the leaseholders and the address of the property.

S.79 of 1993 Act

**2.41**

The landlord may include his costs of providing for the inspection of documents in respect of a management audit as part of cost of management. For any other costs the manager may make a reasonable charge.

## **The Right to Appoint a Surveyor**

S.84 of & Sch. 4  
to 1996 Act as  
amended by Sch. 9  
to 2002 Act

**2.42**

In addition to the right to a management audit referred to above, a recognised tenants' association has the legal right to appoint a qualified surveyor to advise on any service charge issue. The surveyor is given legal rights of access to the landlord's documents and common parts of the premises.

# 3.0

## Management Services and Fees

### The List of Management Services

**3.1** Where managers are acting as agent for a landlord, residents management company or other client, they **should** enter into a written management agreement which sets out the services and fees. The ARHM provides a model management agency agreement suitable for retirement housing schemes.

**3.2** Whether employed as an agent or not, managers **should** provide to all leaseholders a list of management services that are paid for in the management fee.

**3.3** The list of management services will include some or all of the following. (There may be other services performed by managers not shown below and these **should** also be identified).

- Opening and administering bank accounts.
- Preparing and distributing service charge estimates.
- Collecting service charges.
- Accounting for service charges.
- Providing information to auditors for the production of annual accounts.
- Collecting routine service charge arrears but not taking further action requiring legal work or appearance at LVT's.
- Providing management information to residents.
- Liaising with residents associations (liaison beyond that which is normal service level may be charged as an extra).
- Administering buildings and other insurance.
- Providing professional indemnity insurance.
- Employing management staff (excluding estate-based staff).
- Entering into and managing maintenance contracts.
- Inspecting the property to check condition and deal with any necessary repairs other than those of a major nature.
- Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning.
- Periodic health and safety checks but not specialist checks and tests.
- Consultation on management matters, major works, and long term agreements.
- Holding annual meetings with residents.
- Regular visits to supervise scheme managers.
- Drawing up and reviewing risk assessment plans.
- Recruiting and training of scheme managers.
- Preparing specifications, obtaining tenders and supervising major works.
- Fees for specialist advice on assessment of major repairs

and decoration.

- Preparing replacement cost assessments for insurance purposes on buildings and landlord's contents.
- Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary.
- Providing copy documents including insurance policies, copies of invoices and receipts.
- Keeping records of residents and tenancy details.
- Keeping landlords advised on management policy when working as an agent.
- Employing and working with advisors of a specialist nature.
- Auditing of scheme accounts.
- Provision of secretarial services to resident management companies.
- Recovery of unpaid service charges or ground rents or non-compliance with leases including instructing solicitors and giving court evidence.

## The List of Extra Services Attracting Additional Charges

**3.4** Managers employed as agents **should** agree in writing the basis for charging for extra services as part of the management agency agreement.

**3.5** Whether employed as an agent or not, managers **should** provide to all leaseholders a list of extra services that are not charged elsewhere within the service charge and that are subject to additional charges not included in the management fee. Such additional charges may be administration charges, see para. 3.14 below. This list **should** explain how these services would be charged for, if it is possible to do so in advance.

**3.6** The following extra services will normally be chargeable to individual leaseholders and be classed as administration charges. See para. 3.14 below.

- Advising and providing information on the assignment of leases, subletting, changes of use and handling requests for any necessary approvals.
- Preparing schedules of dilapidation or condition in respect of individual dwellings.
- Dealing with requests for improvements or alterations by leaseholders.

**3.7** If a manager proposes to move a service or task from the list of services included in the management fee to the list of services with additional charges then the manager **should** undertake a consultation exercise with all leaseholders affected. Of course, such a change would be subject to what the lease allows.

## Calculation of Fees

3.8

Managers **must** charge management fees which are reasonable having regard to the services provided.

3.9

Managers **should** calculate management fees as an average cost per unit of accommodation. You **should not** use any other method of calculating management fees (for example charging a percentage of outgoings or income) unless a lease entered into before this Code specifically provides for another method of collection or unless it can be shown that such an arrangement does not operate to the potential disadvantage of leaseholders. The use of an average to calculate fees does not mean managers shall not apportion fees to leaseholders according to the basis set out in leases. Managers **must** apportion the total fees for the scheme according to the fractions, percentages or other rules set out in leases.

3.10

If you act as an agent for the landlord, you **should** agree in writing the basis of fee charging and the duties covered at the outset.

3.11

You **should** identify management fees separately in service charge budgets and accounts presented to leaseholders and residents.

## Commissions

3.12

You **should** declare to leaseholders on request any commissions (e.g. insurance commissions) and all other sources of income arising out of the provision of services to your schemes, and be able to demonstrate that any service involving receipt of commission represents good value for leaseholders' money.

## Applications for Permissions and Consents

3.13

Managers **must** reply to applications for permissions or consents arising out of leases in a reasonable time and where the application is refused give reasons. Legislation specifies that in certain circumstances consent cannot be unreasonably withheld (E.g. consent to assign the lease). See also para. 16.12 for special conditions regarding applications for permissions and consents from disabled persons.

## Administration Charges

3.14

Administration charges are charges payable by leaseholders under their leases which are neither service charges or ground rent. These are charges for or in connection with the grant of approvals, for provision of information or documents, for recovery of outstanding amounts under the lease from a leaseholder's

failure to make a payment, or in connection with a breach or alleged breach of a covenant in a lease.

S.158 of & Sch.11  
to 2002 Act

**3.15**

An administration charge is payable by a leaseholder only to the extent that the charge is reasonable. A leaseholder or a landlord may apply to a LVT for an order to vary the lease on the grounds that an administration charge specified in the lease or any formula for calculation of the administration charge in the lease is unreasonable.

S.158 of & Sch. 11  
to 2002 Act

**3.16**

A leaseholder or landlord may also apply to a LVT for a determination whether an administration charge is payable and if so, to whom payable, by whom payable, the amount payable, the date at or by which it is payable, and the manner in which it is payable. An application can be made whether the relevant administration charge has already been paid or not.

**3.17**

A summary of the rights and obligations of the leaseholder in relation to administration charges **must** accompany a demand for an administration charge.

# 4.0

## Repairs and Maintenance

- 4.1 The responsibilities of managers for repairs and maintenance **should** be clearly stated within the lease and managers **should** fully meet these obligations.
- 4.2 Managers **should** also set out in writing the respective repairing obligations of landlord and leaseholder and also how leaseholders **should** report matters requiring repairs.
- 4.3 You **should** provide a service that is as cost effective as possible.
- 4.4 You **should** set out in writing as part of the Leaseholders' Handbook (see Appendix 1 of this Code) how leaseholders **should** report repairs, and you **should** publish target time scales for the completion of repairs which are the landlord's responsibility under the terms of the lease.
- 4.5 You **should** arrange for maintenance work to be undertaken by either staff or approved contractors who provide a customer-orientated and competitively priced service.
- 4.6 You **should** have agreed systems in writing which will enable leaseholders to seek assistance in the event of an emergency arising out of normal working hours.
- 4.7 Where the repair works are necessary but not urgent you **should** seek to group them in the interests of economy.

## Cyclical and Planned Maintenance

- 4.8 Managers **should** draw up and implement an adequate and cost effective programme of planned or cyclical maintenance for communal parts of the scheme together with all plant and services that require regular maintenance (including the maintenance and replacement when necessary of communal furniture and fittings). You **should** make a realistic assessment of the cost of that programme and include an appropriate item in the proposed annual budget for consultation with residents.

## Major Repairs and Reserve Funds

- 4.9 Managers **should** arrange all necessary major repairs and renewals to the buildings to ensure that the scheme is kept up to a reasonable standard of repair and decoration.
- 4.10 You **should** maintain reserve funds to defray the cost of major repairs and renewals whenever the lease allows and on new schemes after this Code comes into force.

**4.11**

If a lease says a reserve fund “shall” or “will” be collected, then managers **must** do so.

**4.12**

Any contributions to a fund **must** pass the test of reasonableness.

**4.13**

Contributions to funds **should** be calculated by the life-cycle costing method for specific building elements and refurbishment of communal areas, and **should** be based on the condition of and be specific to each scheme. Life-cycle costing is the estimating of the life of each component of the building or scheme and its replacement cost. A schedule is put together of the components for the scheme which will demonstrate how much will be required to save for replacement of components as they fall for replacement.

**4.14**

The replacement cost of building elements **should** include V.A.T and the cost of any professional or other fees that may be incurred in carrying out works to those elements in the future.

**4.15**

Managers **should** consider annually whether a review of the calculation of the adequacy of funds is appropriate.

**4.16**

If a manager intends to introduce a new method of calculation of contributions to funds, then the manager **should** carry out a consultation exercise with leaseholders.

**4.17**

Managers **should** make available to any leaseholder on request a copy of the method used to calculate reserve fund contributions.

**4.18**

Managers **should** only transfer service charge funds to reserve funds in accordance with the provisions made in the annual budget for the service charge.

**4.19**

Managers **should not** seek to transfer any actual or potential surpluses on service charges to reserve funds until the annual accounts have been audited and consultation has taken place with residents in accordance with paragraphs 11.3 – 11.9 of this Code.

**4.20**

Managers **should** hold all contributions to reserve funds in trust where appropriate. See paragraphs. 2.2 and 2.3 of this Code.

## Consultation on Qualifying Works (See also para. 5.5)

**4.21**

Managers **must** consult with leaseholders where it is proposed to carry out qualifying works costing more than the prescribed amount. If you do not do so the expenditure incurred over the prescribed amount may not be recoverable.

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

4.22

The “prescribed” amount is more than £250 for any leaseholder. The figure may change subject to amendment by regulations.

4.23

You **must** give all leaseholders and recognised tenants’ associations notice of intention to carry out the qualifying works. As part of this notice you **must** invite all leaseholders and recognised tenants’ associations to nominate contractors for the works.

4.24

All leaseholders and recognised tenants’ associations have 30 days to make comments on the proposed works and nominate contractors. You **must** have regard to these comments and seek estimates from nominees according to the detailed rules that apply. See the Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended by the Service Charge (Consultation Requirements)(Amendment)(Wales) Regulations 2005 No. 1357 for details.

4.25

As a second stage of the consultation process, you **must** supply the leaseholders and any recognised tenants’ associations who are required to contribute to the costs of the works, with a further notice describing the works. This notice **must** give the costs of at least 2 estimates received and state where all of the estimates may be inspected. At least 1 of the 2 estimates **must** be from a firm or contractor wholly unconnected with the landlord. Wherever practical you **should** obtain 3 estimates for works costing more than the prescribed amount. If a contractor nominated by leaseholders provides an estimate, then that **must** be 1 of the minimum of 2. The notice **must** also include your response to any comments made by leaseholders about the works after the first stage of consultation in paragraph 4.24.

4.26

You **should** declare to leaseholders and any recognised tenants’ association, which estimates, if any, are from contractors with a connection to the landlord or the manager.

4.27

You **must** invite comments from leaseholders on the proposed works and estimates received, and give the name and address of the person in the UK to whom comments may be sent, giving at least 30 days for a reply from the date when the notice is given.

4.28

You **must** have regard to comments received before placing a contract for the works. Once you have entered into a contract you **must** as soon as reasonably practical write to all leaseholders and recognised tenants’ associations stating your reasons for your choice of contractor, and replying to any observations received at the second stage of consultation. See paragraph 4.25 above. You need not write in this fashion if you have contracted with the person submitting the lowest estimate or with a nominated contractor.

4.29

If costs of major repairs carried out after consultation seem likely

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No.684 as amended

to overrun, or the nature of works to be undertaken changes after those works commence, then you **must** consult again before committing further expenditure.

**4.30** Only a LVT can agree to dispense with the need to consult under section 20 of the 1985 Act. In the event of an emergency therefore, you **should** adhere to as much of the consultation process as possible, while informing residents of the reasons for any emergency action as soon as possible. If the cost is to be recoverable and a dispute about consultation has arisen you will need to seek a dispensation from a LVT and will have to satisfy the LVT that you acted reasonably.

**4.31** A LVT may agree to dispense with consultation if satisfied that it is reasonable to dispense with the requirements, and an application can be made to them before the works are carried out, or in the case of an emergency for example, either during or after the works where a dispute has arisen.

**4.32** Where the landlord is an RSL consideration needs to be given to adhering to public law for the purposes of procurement rules, and any contract for work that exceeds the appropriate threshold **should** be properly procured. Where the responsibility is not clear in respect of the procurement rules legal advice **should** be sought.

## Defects in New Buildings

**4.33** Managers **should** ensure that staff are aware of the terms of the defects and structural warranty offered to leaseholders in respect of new dwellings.

**4.34** While the warranty on a new dwelling is a contractual matter between the purchaser and the builder, you **should** be prepared both to offer advice to leaseholders on the terms of that warranty and the steps they **should** pursue if they wish to make a claim, and also to initiate claims under the common parts warranty.

**4.35** Except by agreement with leaseholders or in an emergency (whereupon you **should** endeavour to recover the costs), you **should not** spend scheme funds rectifying defects that **should** be attended to under the terms of a defects or structural warranty. Care **should** be taken not to invalidate the terms of a warranty.

# 5.0

Contract Law

## Provision of Services

**5.1** Managers **must** meet the obligations set down in individual leases to provide or arrange services. If you do more than the lease requires you may not be able to recover the costs.

**5.2** Managers **should** ensure that services are provided or arranged in an efficient and cost-effective way and in a manner which provides value for money for leaseholders

**5.3** Managers **should** monitor the quality and efficiency of services provided and publish target time scales for the delivery of services, where appropriate, taking into account the views of leaseholders. You **should** take reasonable action to improve services based upon feedback from such monitoring.

**5.4** Managers **should** consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of leaseholders.

## Consultation on Long Term Agreements (See also para. 4.21)

S.20 of 1985 Act as amended by S.151 of 2002 Act  
The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

**5.5** Managers **must** consult with leaseholders when it is proposed to enter into an agreement of more than 12 months for the provision of a service. Consultation will only be required where the cost of the proposed agreement is estimated to exceed the prescribed amount of more than £100 per annum for any one leaseholder. This figure may change subject to amendment by Regulations.

**5.6** Consultation **must** be in two stages. Before tenders are invited you **must** send to all leaseholders and to the secretary of any recognised tenants' association a notice of intention of entering into the agreement, explaining what is involved or where a detailed explanation can be inspected.

**5.7** As part of the notice of intention you **must** invite comments on the proposed agreement and invite any leaseholder or recognised tenants' association to nominate contractors for the service. They **must** be given at least 30 days to comment or nominate. You **must** deal with any nominations made according to the detailed rules that apply. These rules can be found in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 no.684 as amended by the Service Charge (Consultation Requirements) (Amendment)(Wales) Regulations 2005 No.1357.

**5.8** After seeking tenders or estimates as the second stage you **must** notify all leaseholders and recognised tenants' associations of your proposals. You **must** supply at least 2 proposals describing

the service to be provided, the estimated cost from a contractor and your response to any comments received at the first stage of consultation in paragraph 5.7. You **must** also inform them where all the estimates received can be inspected.

**5.9** At least 1 of the proposals **must** be from a contractor wholly unconnected to the landlord. Wherever practical you **should** obtain 3 estimates for agreements costing more than the prescribed amount. If a contractor nominated by leaseholders provides an estimate, then that **must** be one of the minimum of 2.

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

**5.10** You **must** declare to leaseholders and any recognised tenants' association, which estimates, if any, are from contractors with a connection to the landlord or manager, as part of the consultation procedure in paragraph 5.8.

The Service Charges (Consultation Requirements) (Wales) Regulations 2004 No. 684 as amended

**5.11** You **must** invite comments from leaseholders and any recognised tenants' association on the proposals, and give the name and address of the person in the U.K to whom comments may be sent. You **must** give at least 30 days for comments from the date when the notice of the proposals is given.

**5.12** You **must** have regard to comments received before placing the long term agreement and, once the agreement is entered into, you **must** provide a notice in writing within 21 days to all leaseholders and recognised tenants' associations setting out reasons for your choice of contractor and responding to any observations received at the second stage of consultation in paragraph 5.8. As an alternative the notice may state where the reasons and your response can be inspected. You do not need to send this final notice at all if you entered into the agreement with a contractor nominated by leaseholders or the contractor with the lowest estimate.

## Other Services

Contract Law

**5.13** Managers **must** use their best endeavours to ensure that any scheme's emergency call system is kept fully operational and that arrangements are made to monitor and respond to emergency calls from residents.

Contract Law

**5.14** Managers **must** ensure that all master keys are accounted for, are kept in a safe and secure place and are only used by authorised personnel in appropriate circumstances.

**5.15** Managers **should** take appropriate steps to control access into buildings on schemes so as to establish, as far as possible, a secure environment for residents while ensuring access for emergency services.

Contract Law

**5.16** Managers **must** arrange for furniture, fittings, equipment and carpeting in any common room, laundry, guestroom or other

communal room or area to be maintained and renewed when necessary.

**5.17** Managers **must** arrange for the gardens and grounds to be maintained to a standard consistent with the quality of the development and use reasonable endeavours for paths, driveways and car parks to be kept in a safe condition. Managers **must** ensure that gutters, downpipes and gullies are kept clear.

**5.18** Managers **should** ensure that any rent payable and retainable by them for accommodation provided to staff employed to provide services is reasonable having regard to the age, geographical location, condition, size and purpose for which the accommodation is used, unless the rental sum is fixed or determined otherwise by the terms of the lease. Where the rent is set by a third party and is being collected by the manager acting as an agent, this requirement will not apply.

**5.19** Where it is proposed to provide an additional service not recoverable under the terms of the leases from all leaseholders, managers **should** make arrangements that will mean that only those leaseholders who benefit bear the costs.

**5.20** Before allowing a contractor access to the development to sell his services direct to the leaseholders, managers **should** ensure that an appropriate agreement is in place to govern the way the contractor will operate.

## Health and Safety

**5.21** Managers **must** ensure they comply with the requirements of the Health and Safety at Work etc. Act 1974 and with relevant Health and Safety Codes and Regulations (see Appendix 2) to promote health and safety and protect workers and residents. They **should** ensure that all work is carried out in a safe manner.

**5.22** Managers **should** visit schemes on a regular basis in order to check on health, safety and fire issues, risk assessments, and health and safety records.

**5.23** Managers **must** ensure that arrangements are in place for regular inspections and maintenance of fire alarm systems and equipment (Regulatory Reform (Fire Safety) Order 2005 No.1541 as amended), emergency lighting, lifts (Lifting Operation and Lifting Equipment Regulations 1998 No. 2307 as amended) and communal boilers, and that they are all carried out by competent and qualified personnel.

|  |             |  |
|--|-------------|--|
| The Electricity at Work Regulations 1989 No. 635 as amended                          | <b>5.24</b> | Managers <b>must</b> arrange for fixed and portable electrical equipment to be tested in accordance with the Electricity at Work Regulations 1989 No.635.  |
| The Gas Safety (Installation and Use) Regulations 1998 No. 2451 as amended           | <b>5.25</b> | Managers <b>must</b> arrange for gas appliances for which they are responsible to be maintained in good order and checked for safety at least every 12 months.   |
| Contract Law. The Control of Substances Hazardous to Health Regulations 2002 No.2677 | <b>5.26</b> | Managers <b>must</b> arrange for the regular cleaning and redecoration of the internal common parts including corridors, staircases and windows and <b>should</b> ensure that landings and staircases are kept clear from all obstructions. You <b>must</b> ensure that cleaning materials are stored safely and securely.   |
| Control of Asbestos Regulations 2006 No. 2739  | <b>5.27</b> | Managers <b>must</b> comply with their obligations under the Control of Asbestos at Work Regulations 2006 in so far as they apply to communal areas.   |
| The Private Water Supplies Regulations 1991 No. 2790 as amended                      | <b>5.28</b> | Managers <b>must</b> comply with the requirements to monitor the quality of water supplies where the supply to properties or communal areas is other than direct from the water provider or where there are communal tanks. The Private Water Supplies Regulations 1991 and the Approved Code of Practice on the Control of Legionella Bacteria in Water Systems are relevant. |
| Furniture and Furnishings (Fire) (Safety) Regulations 1988 No. 1324 as amended       | <b>5.29</b> | Managers <b>must</b> comply with the Furniture and Furnishings (Fire Safety) Regulations 1988 with regard to soft furnishings in communal areas.   |
| Management of Health & Safety at Work Regulations 1999 No. 3242 as amended           | <b>5.30</b> | Managers <b>must</b> ensure that health, safety and fire risk assessments are undertaken and reviewed on an annual basis or more frequently should the need arise.   |
| Health & Safety at Work Act 1974   | <b>5.31</b> | Managers <b>must</b> ensure that appropriate health, safety and fire policies are in place and subject to regular review.  |

# 6.0

## Variation of Special Services

6.1

Where a service is expressly set out in the lease for a scheme then the following procedures do not apply. The procedures for variation of leases by reference to a LVT are set out in sections 35-40 of the 1987 Act.

### Definition of Special Services

6.2

Special services are

- the scheme manager service
- the emergency alarm system and link to a monitoring centre
- the communal facilities.

A variation of a special service may be the removal or a significant change in or significant variation in the charges for that service.

### Restriction on Variation of Special Services

6.3

Unless a proposed change would require a variation to the lease, you **should not** vary a special service without:

- Holding a meeting to inform and explain the proposal to vary the special service; and
- Holding a secret written ballot of all leaseholders on the motion to vary the special service; and
- Achieving a result for the motion of at least 66% of those voting (and this figure shall be at least 51% of those eligible to vote) AND the number of votes counted against the motion shall be not more than 25% of those leaseholders eligible to vote.

### The Meeting to Inform and Explain

6.4

You **should** hold a meeting at a time and place convenient to leaseholders, to which all leaseholders **should** be invited. You **should** give a minimum of 2 weeks' notice of the meeting.

6.5

You **should** issue documents explaining the proposal(s) and any documents/papers **should** arrive at least 7 days in advance of the meeting.

6.6

Any documents **should** be written in simple language and **should** contain:

- A summary
- The objective of the proposal to vary the special service
- The issue to be addressed
- Who is likely to be affected and how
- Various options, backed up by arguments for and against them, and allowing for other options to be put forward
- A full explanation of the costs of the various options
- The name, address and telephone number of a person with whom leaseholders can discuss the issues prior to the meeting.

## The Ballot

6.7

The ballot **should** be a secret postal vote.

6.8

The ballot paper **should** contain the motion to be considered. It **should** state clearly the majority required to pass the motion (as set out in paragraph 6.3 above), who will count the ballot and how the count will take place. The period allowed for votes to be returned **should** be a minimum of 30 days.

6.9

The ballot papers **should** be returned to and counted by a person or organisation independent of the landlord, manager, residents' association, and any leaseholder. It **should not** be possible for the votes of leaseholders to be identified by other leaseholders or managers.

6.10

Each leaseholder may cast one vote. Joint leaseholders will receive one ballot paper. Where the leaseholder is not resident the ballot paper **should** be sent to any alternative address provided.

6.11

The manager **should** inform all leaseholders (in writing by letter or a notice on the scheme notice board) of the result of the ballot including the total number of votes counted for, counted against, the abstentions from voting on the motion, and any votes rejected from the count with the reason for rejection.

# 7.0

## Contractors

- 7.1 Managers **should** only use contractors who possess the necessary skills and experience for the service to be provided and **must** comply with the Construction (Design and Management) Regulations 2007 (SI 2007 No. 230) where appropriate.
- 7.2 Managers **should** ensure that contractors are courteous, trustworthy and work in a manner that does not cause undue inconvenience to residents.
- 7.3 Managers **should** ensure that contractors respect that they are working in occupied premises and **should** issue contractors with a list of requirements to be followed whilst working at a scheme.
- 7.4 Managers **should** declare to leaseholders any association or connection they may have with contractors in advance of placing any order with that contractor. In such cases, managers **should** ensure that they are able to demonstrate that that contractor represents good value by testing costs in competition with other contractors.
- 7.5 In selecting contractors, managers **should** have due regard to economy, quality and value for money. You **should** be aware of the day work rates/call out charges etc. of contractors before work is ordered.
- 7.6 Managers **should** employ contractors that have adequate public liability insurance, or ensure that any public liability claim can be covered through the manager's insurance (see also paragraph 8.2 of this Code).
- 7.7 Managers **should** employ contractors that have equal opportunity policy and practice statements for the recruitment and conduct of their staff. Managers **should** also ensure that contractors will take action in the event of any discriminatory act.
- 7.8 Managers **must** take reasonable steps to ensure that all contractors carry out work in a safe manner in compliance with Health and Safety Codes and Regulations (see Appendix 2 of this Code).
- 7.9 Managers **should** ensure that the work required from contractors is clearly defined. For qualifying works (see paragraphs 4.21 to 4.32 of this Code) and for long term agreements (see paragraphs 5.5 to 5.12 of this Code) you **should** use a written specification and competitive tender with payments made in stages and penalty clauses to ensure that work is carried out promptly to a reasonable standard.

**7.10** Managers **should** have procedures for checking the standard of work carried out by contractors prior to payment of invoices and for taking account of these checks before ordering further work. You **should** also take account of the views of leaseholders on the standard of work provided by contractors before ordering further work from that contractor.

**7.11** Managers **should** use contractors who are members of a relevant trade organisation wherever appropriate.

**7.12** Managers **should** comply with the requirements of HM Revenue and Customs under the requirements of the Construction Industry Scheme where applicable. Details of this scheme may be obtained from any tax office.

# 8.0

S.19 of Financial Services & Markets Act 2000

## Insurance

**8.1** Managers that undertake insurance related activities **must** be authorised to do by the Financial Services Authority. (This requirement does not apply to RSL's.)

**8.2** Where the manager undertakes to arrange insurance, you **should** arrange cover with a reputable company. The extent of cover will normally be specified in the lease but will generally include:

- buildings insurance (including the cost of providing suitable alternative accommodation for the residents)
- engineering plant insurance (e.g. lift boilers and ventilation equipment)
- public liability insurance
- communal contents insurance (e.g. residents lounge and guest room furniture).

**8.3** Managers **should** make clear to leaseholders who is responsible for insuring against different risks including responsibility for insuring household contents.

## Rights to Information about Insurance

**8.4** Managers **must**, on request in writing, provide a summary of the insurance cover, and afford reasonable facilities for inspecting the policy document and evidence of payment of premiums, and for taking copies or extracts from them. Alternatively managers **must**, on request in writing, take copies for the leaseholder and either send them, or arrange for them to be collected, as the leaseholder prefers. Managers **must** comply with the leaseholder's request within 21 days beginning with the day on which the request in writing is received.

**8.5** Managers **must not** make a charge for making facilities available for inspection in paragraph 8.4 above, but may treat the costs of such inspections as part of their management fee.

**8.6** Managers may make a reasonable charge for doing anything else, apart from the inspection, in complying with a request for copies of insurance documents in paragraph 8.4 above. Managers **should** advise the leaseholder in advance of any charges.

**8.7** If insurance is effected by a superior landlord, managers **must** pass any request on to the superior landlord by giving a notice in writing requiring the superior landlord to give you the relevant information.

**8.8** Failure to comply with the requirements set out in paragraphs 8.4 and 8.7 above is a criminal offence.

S.30A of & Sch. to 1985 Act as amended by Sch 10 to 2002 Act

S.30A & Schedule to 1985 Act as amended by Sch 10 to 2002 Act

|  |             |   |
|--|-------------|---|
| S.30A & Sch. to 1985 Act 1985 as amended by Sch. 10 to 2002 Act                          | <b>8.9</b>  | The assignment of a lease or tenancy does not affect the validity of a request under paragraphs 8.4 to 8.7 above.   |
| Schedule to 1985 Act as amended by S.165 to 2002 Act                                     | <b>8.10</b> | Leaseholders have the right to notify the insurer of any damage caused to their dwelling or any part of the building containing their flat where the insurance policy provides that claims <b>must</b> be notified within a specified period.   |
| S.164 of 2002 Act  | <b>8.11</b> | Where a leaseholder is required to insure the dwelling with an insurer nominated or approved by the landlord, he may apply to the LVT for an order requiring the landlord to nominate another insurer. The LVT may issue such an order where the insurance available from the insurer nominated by the landlord is determined to be unsatisfactory in any respect or where the premium payable is excessive.  |
| Employer's Liability (Compulsory Insurance) General Regulations 1998 No. 2573 as amended | <b>8.12</b> | Where the leaseholder of a house is required to insure the house with an insurer nominated or approved by the landlord, the leaseholder has the right not to insure with the landlord's choice if he fulfils certain conditions. Namely the house is insured with an authorised insurer, under a policy that covers both the landlord and the leaseholder for all risks required by the lease and for an amount not less than the lease requires to be covered. The leaseholder <b>must</b> also have given the landlord notice in the prescribed form before the end of 14 days on which the policy took effect if not renewed, or if it has been renewed 14 days from when it was last renewed. The prescribed contents and form for the notice to be served on the landlord can be found in the Leasehold Houses (Notice of Insurance Cover) (Wales) Regulations 2005. SI 2005 No. 1354. |
|  | <b>8.13</b> | Managers <b>should</b> ensure that all insurance cover is arranged at good value for money and that the placement of the insurance business, the extent of cover and the premiums are reviewed annually.  |
|  | <b>8.14</b> | Managers <b>must</b> arrange employer's liability insurance and display a current employer's liability insurance certificate at any scheme where permanent staff are employed. An employer is required to display a copy of the certificate of insurance at a place of business at which he employs staff who may be covered by the insurance.  |
|  | <b>8.15</b> | Managers <b>should</b> consider arranging sickness insurance cover for scheme-based staff to reduce unpredicted overspends on relief costs, if say a scheme manager is sick for an extended period.   |
|  | <b>8.16</b> | Managers <b>should</b> ensure that there are appropriate systems for ensuring that any expenditure falling within the scope of the insurance policy is properly and promptly claimed under the policy and that the claim is diligently pursued, where necessary.  |

**8.17** Managers **should** keep leaseholders who are due to receive a claims settlement informed on the progress of the claim, or provided with sufficient information to allow them to pursue the matter themselves, and **should not** deduct arrears or other payments due when passing on claims settlements due to individual leaseholders.

**8.18** Managers **should** carry adequate professional indemnity insurance.

# 9.0

## Scheme Managers and Other Staff

### Appointment

- 9.1 Managers **should** make enquiries into the employment history, relevant personal qualities and background of anyone they are intending to appoint as a scheme manager to satisfy themselves as far as possible that any prospective scheme manager is honest and trustworthy and a suitable person to supervise retirement housing.

### Contract

- 9.2 Information on contracts of employment can be obtained from Appendix 5 which is not part of the approved code.

### Scheme Managers' Duties

- 9.3 Managers **should** issue scheme managers with a job description that clearly defines their duties and responsibilities. Managers **should** also make clear what scheme managers can and cannot do for residents to protect them from unreasonable demands.

- 9.4 Residents **should** be informed of the scheme manager's terms of employment, duties and responsibilities and **should** be given a copy of the scheme manager's job description and hours of duty on request.

- 9.5 Managers **should** issue each scheme manager with a comprehensive manual which clearly sets out all duties, responsibilities and operating procedures. Issues which **should** always be included are policies on dealing with emergencies and master keys, on the use of communal facilities, on dealing with petty cash and other monies, on authority over on-site contractors, on health and safety and on administering medicines/drugs.

- 9.6 Managers **should** ensure that all scheme managers keep a daily diary recording all significant events on site and dealings with residents (such as emergencies, injuries, disputes and maintenance works) and keep it in a safe place for not less than 6 years. Diaries can be of great help in recalling important facts and actions should these ever be called into question at a later date.

- 9.7 You **should** allow individual residents on request to know what is recorded about them (not other residents) in the scheme manager's diary, by providing a copy or extract.

**9.8** Managers **should** make clear to scheme managers and residents where responsibility lies for repairs to the scheme manager's dwelling and fixtures and fittings therein. In most cases, the lease will provide for the cost of such repairs to be charged to leaseholders through the service charge account.

## Supervision

**9.9** Managers **should** provide supervision and back-up support for scheme managers, as the nature of their job means that scheme managers can feel isolated. A specific person **should** be available to them to provide help and advice and to ensure they feel part of the management team. That person **should** visit the scheme manager on site at least every eight weeks (on average) and **should** be able to be contacted by telephone at other times.

**9.10** The specific person **should** ensure that the scheme manager is following the organisation's proper practices and procedures and is observing the correct hours of duty. The specific person **should** also deal as promptly as possible with any difficulties the scheme manager cannot resolve or with any problems in the relations between scheme manager and residents.

**9.11** Managers **should** arrange for the relationship between the scheme manager and the specific person to be monitored.

**9.12** Managers **should** have policy and procedures to deal with aggressive behaviour towards and harassment of scheme managers by residents or others. These policies and procedures **should** be notified to scheme managers. See also paragraphs 16.4 and 16.5 of this Code.

## Training

**9.13** Managers **should** provide a training programme for each scheme manager based on the experience and qualifications of that scheme manager.

**9.14** Scheme managers **should** be offered an induction course shortly after starting work with the organisation; thorough on-site training in procedures and policies; regular skills training and updating on new procedures and organisational changes.

**9.15** Managers **should** ensure that staff responsible for supervising scheme managers are given full and proper job training. It is also recommended that senior managers review the performance of those staff at regular intervals and identify any individual training needs.

## Code of Conduct

9.16

Managers **should** provide scheme managers with a copy of the Code of Conduct for managers of private retirement housing issued by the Association of Retirement Housing Managers and give training to ensure understanding of its principles. (See Appendix 3) The Code **should** be available for inspection by residents on request.

# 10.0

## Supporting People and Care Services

### 10.1

Leaseholders may be eligible for financial assistance with support services such as the scheme manager and an alarm response, subject to meeting the requirements of the supporting people administering authority. Managers **should** meet reasonable requests from leaseholders for additional information required to assist their claims.

Care Standards Act  
2000 as amended

### 10.2

Managers who provide care services to residents as an additional arrangement **must** comply with the Care Standards Act 2000 if applicable and, in addition, **should** ensure that:

- a) Enquiries are made into the employment history, relevant personal qualities and background of anyone they are intending to appoint as care staff including the requirement for a criminal records bureau check;
- b) Staff have a clear job description and the role, responsibilities and duties of each member of staff and the care service are clearly defined and explained to residents, and any additional charges are clearly specified;
- c) If care staff are to be provided to help specific leaseholders on a regular basis, then those leaseholders need to know exactly when this will happen and who will give them this help. This **should** be explained and written down clearly and the leaseholder and the manager **should** each keep a copy;
- d) Regular assessments are made to establish that the client and carer are satisfied that the service is working effectively (this **should** be carried out by the care staff's immediate supervisor);
- e) A complaints procedure is established with the name of the relevant person to contact if a complaint is to be made or redress of grievance sought;
- f) The care staff are made aware of any relevant legislation or regulations which will need to be adhered to i.e. Health and Safety at Work, Food Hygiene etc;
- g) Adequate insurance cover is provided to cover the relevant care tasks;
- h) Clear guidelines are established for any administering of medicine/drugs (persons dispensing drugs should be aware of the relevant legal requirements);

- i) Care staff keep accurate notes and records and liaise where necessary with other agencies such as GP's and other health workers, social services and Department of Health.

# 11.0

## Consultation and Provision of Information

**11.1** Managers **should** aim to achieve good and effective communications with leaseholders and any residents' associations and **should** be available to meet leaseholders at their scheme at least quarterly.

**11.2** All communication with leaseholders **should** be accurate, concise and clear.

### Consultation on Qualifying Works

*SEE PARAGRAPHS 4.21 TO 4.32 OF THIS CODE*

### Consultation on Long Term Agreements

*SEE PARAGRAPHS 5.5 to 5.12 OF THIS CODE*

### Consultation on Variation of Special Services

*SEE CHAPTER 6 OF THIS CODE*

### Consultation on Management Matters

**11.3** In addition to the statutory requirements to consult and the requirements in Chapter 6 where variations to special services are proposed, managers **should** consult with all leaseholders on other management matters which are likely to have a significant effect on the quality of services and level of service charges or which will otherwise significantly affect some or all leaseholders.

**11.4** Managers **should** choose the most appropriate method of consultation for the matter in question to ensure that leaseholders receive full information. This may include individual correspondence, meetings or newsletters.

**11.5** If a meeting is called it **should** be at a time and a place convenient to leaseholders to which all **should** be invited. You **should** give a minimum of 14 days' notice of the meeting and any documents/papers **should** arrive at least 7 days in advance of the meeting.

**11.6** You **should** issue a document or documents explaining the proposal(s) whether a meeting is held or not.

**11.7** Any document **should** be written in simple language and **should** contain:

- A summary of the proposal(s)
- The objective and the issue to be addressed
- Who is likely to be affected and how
- Various options and arguments for and against each one
- A full explanation of the costs of the various options
- A statement on how a decision will be reached after the consultation
- The name, address and telephone number of a person with whom leaseholders can discuss the issue prior to the meeting

**11.8** A minimum of 14 days **should** be allowed for comments to be made in writing after issuing documents and/or holding a meeting.

**11.9** Managers **should** take account of all comments. Managers **should** inform all leaseholders of the outcome and the reasons for the decision taken in writing by letters or a notice on the scheme notice board.

## Annual Meeting

**11.10** Managers **should** hold an annual meeting for all leaseholders on each scheme to allow residents to comment on any proposed changes to the service charge, the extent and quality of services provided and other management matters. (This meeting may also be the annual budget meeting, see paragraph 1.8 of this Code.)

**11.11** A minimum of 2 weeks' notice of the annual meeting **should** be given to all leaseholders and papers for the meeting **should** be sent to leaseholders to arrive at least 7 days in advance of the meeting.

**11.12** The meeting **should** be held at a time and place convenient for leaseholders and **should** be attended by a member of the manager's staff who is responsible for the setting of service charges, and is prepared to answer questions on the general management of the scheme and other relevant matters.

**11.13** Managers **should** confirm in writing any commitments made at the meeting.

## Provision of Information

**11.14** Managers **should** respond promptly to requests for information from leaseholders and publish target time scales for such responses.

**11.15** Managers **should** supply any reasonable information required for Home Information Packs (to be introduced from 2007) and any other pre-contract enquiries within a reasonable time to allow leaseholders to progress the sale of their dwellings. A charge or charges, which **should** be reasonable, may be made to the outgoing leaseholder specifically for this work.

## Leaseholders' Handbook

**11.16** Managers **should** ensure that all purchasers of dwellings that they manage are provided with a leaseholders' handbook that **should** contain at least the information set out in Appendix 1 of this Code. You **should** also give all existing residents access to the current version of the handbook for their scheme, and provide a copy to all recognised tenants' associations. The handbook **should** be regularly reviewed and updated when necessary.

## Information about the Landlord

**11.17** Managers **must** supply the name and address of the landlord to a leaseholder who requests this information in writing. Managers **must** respond to such a request within 21 days. If the landlord is a company, you **must** also supply the address of the registered office and, if requested, the name and address of the directors and secretary of the company. Failure to respond to such requests is a criminal offence.

## Right of First Refusal of a Sale of the Freehold

**11.18** Managers who are landlords and who are not RSLs **must**, if they wish to dispose of the freehold or any other interest in the scheme, give their 'qualifying' leaseholders first refusal on the purchase. In general qualifying leaseholders are those holding long leases for a term over 21 years.

**11.19** RSL's who are landlords **should** give their leaseholders first refusal on the purchase (as if the legislation applied) if they wish to dispose of the freehold. RSL's will also normally require the consent of the National Assembly for Wales to the disposal of a freehold or any other interest in a scheme.

S.37 of Criminal Justice Act 1982 as amended by Criminal Justices Act 1991 and S.2 of 1985 Act

Part 1 of the 1987 Act

# 12.0

## Residents' Associations and Recognised Tenants' Associations

### Residents' Associations

**12.1** Managers **should** have a formal commitment to encouraging properly constituted and democratically run residents' associations at their schemes. It is recommended that managers supply literature to leaseholders giving guidance on how to set up and run an association. The ARHM has produced a model constitution for residents' associations that is available free of charge to managers and leaseholders.

**12.2** Managers **should** recognise an association (subject to the landlord's agreement if required), which has a membership representing 51% or more of the leaseholders and other tenants on the scheme that contribute to the same costs by way of a variable service charge, and where the association has a proper constitution and elected officials. It is recommended that managers **should** retain details of the constitution, officials and membership and ask the association to supply details of any changes as they occur. Managers **should** give notice in writing to the secretary of the residents association that the association is a recognised tenants' association under S29 of the 1985 Act, and that such status confers certain legal rights.

### Recognised Tenants' Associations

S.29 of 1985 Act

**12.3** Alternatively to 12.2 above, residents' associations can apply to the rent assessment panel for Wales for a certificate of recognition which will generally be given if the association has a membership of 60% or more of the residents, a proper constitution and elected officials. The residents' association will then become a recognised tenants' association which is a statutory expression under s.29 of the 1985 Act and confers certain legal rights.

### Legal Rights of Recognised Tenants' Associations

**12.4** Managers **should** be aware that recognition of an association under s.29 of the 1985 Act confers additional legal rights on it over and above those available to the individual leaseholder, whether the association was recognised voluntarily by the landlord or following application to a rent assessment panel. (See Chapters 1, 2, 4, 5 and 11 of this Code).

S.20 of 1985 Act as amended by S.151 of 2002 Act

**12.5** In addition to individual leaseholders, managers **must** give recognised tenants' associations the opportunity to nominate

contractors for qualifying works and long term agreements on the scheme and send a copy of the proposals to the secretary before going out to tender.

S.30A of 1985 Act

**12.6**

Managers **must** supply the secretary of a recognised tenants' association with a summary of insurance cover on request in writing.

S.21 & 22 of 1985 Act

**12.7**

The secretary of a recognised tenants' association may request a summary of relevant service charge costs incurred. You **must** also allow the secretary of a recognised tenants' association the opportunity to inspect the relevant accounts and receipts relating to a summary of costs (see paragraphs 2.13 & 2.28 of this Code).

S.30B of 1985 Act

**12.8**

Where a landlord is served with a notice by a recognised tenants' association requiring him to consult that association on matters relating to the employment by him of a managing agent, he **must** inform the association of the name of the managing agent and duties that the managing agent discharges or will discharge, on his behalf and:

- a) allow the association not less than 1 month to make observations on any proposed managing agent;
- b) allow the association a reasonable time to make observations on the manner in which an existing managing agent has been discharging his duties and on the desirability of his continuing to discharge them;
- c) specify the name and address in the United Kingdom of the person to whom observations should be sent; and
- d) have regard to the observations made by the association.

S.30B of 1985 Act

**12.9**

Recognised tenants' associations can also serve a notice on the landlord asking to be consulted about matters relating to the appointment of a managing agent. Where this is done the landlord would need to give the name of the proposed agent, the proposed duties that the agent is to discharge, and allow at least 1 month for observations to be made.

S.30B of 1985 Act

**12.10**

Where a notice has been served on the landlord under 12.8 or 12.9 above, a notice **must** be served on the recognised tenants association at least once in every 5 years specifying any changes to the managing agents obligations or duties since the last notice was served, allowing a reasonable period of time for observations to be made on the discharging of those obligations and duties, and on the desirability of the agent continuing to discharge them. However, this notice is not necessary if the association subsequently serves a notice withdrawing the request to be consulted.

**12.11**

For recognised tenants' associations which have been recognised by the landlord, at least 6 months' notice **must** be given if they intend to withdraw recognition. Reasons for the withdrawal **must** be given in writing to the secretary of the association. Alternatively if the association was recognised by a rent assessment panel, the recognition may be cancelled by the panel at any time if there is good reason.

## Good Relations with Residents' Associations

**12.12**

Managers **should** endeavour to maintain good working relationships between staff and residents' associations. Generally, good relations can be maintained by proper consultation and keeping associations up to date with any proposed changes or works. However when dealing with residents' associations, managers **should** also remember that they also have a responsibility to, and **should** maintain dialogue with, individual leaseholders.

**12.13**

Managers **should** regard the legal requirements about consultation with residents' associations as a minimum and seek to consult and advise associations on issues affecting the scheme other than minor day to day matters.

**12.14**

Managers are recommended to ensure that information held on residents' associations is reviewed and revised on an annual basis, and that they are informed of the residents that are members and those who have authority to speak on behalf of the association.

# 13.0

## Complaints Procedure

13.1

Managers **should** provide each leaseholder with an up to date copy of their complaints procedure or inform them where a copy can be obtained. Managers **should** train staff to welcome complaints and value them as a way to learn and improve services.

13.2

The complaints procedure **should** state whom leaseholders should complain to in the first instance and the steps they should follow if satisfaction is not obtained at that stage. There **should not** be a requirement that all complaints should be in writing.

13.3

The complaints procedure **should** set down reasonable target time scales for responding to the complaint at each stage of the procedure. There **should** be no more than 3 stages in the procedure.

13.4

The complaints procedure **should** ultimately allow the leaseholder the right to a face-to-face hearing with a panel at a senior level in the management organisation.

13.5

Managers **should** offer mediation and conciliation as an option for resolving complaints as part of their complaints procedure.

13.6

Managers **should** make leaseholders aware of other organisations which can provide advice or take up complaints. E.g. Citizens Advice Bureau, LEASE, and AIMS. You **should** offer maximum cooperation with all recognised advice agencies that handle complaints and requests for information, and with any other intermediary consulted by the leaseholder.

13.7

Managers **should** give all leaseholders access to an independent redress scheme if, after using the manager's complaints procedure, they are still not satisfied.

13.8

Managers that are RSL's are required to become members of the Public Services Ombudsman for Wales and **must** offer access to this independent redress scheme.

13.9

Managers that are not RSL's **should** become members of another independent redress scheme approved by the ARHM.

S.51 of 1996 Act

# 14.0

Estate Agents Act 1979 as amended and Property Misdescriptions Act 1991

## Resales

14.1

Managers who offer a sales service **must** comply with the Estate Agents Act 1979 and the Property Misdescriptions Act 1991.

14.2

Managers may offer a sales service to leaseholders but this **should** only be one option. Leaseholders **should** also have the option of finding their own buyer and/or appointing an estate agent of their choice (subject to any rights of the landlord to approve a purchaser according to the criteria set out in the lease), except where the property has been built with the aid of public funding intended to reduce the price to purchasers. In that case, the new purchasers may be limited to those meeting the criteria required as a condition of public funding.

14.3

Managers **should not** make any charge or require any payment on resale except where it is stated or implied in the lease or where a service has been offered and accepted at an agreed fee. Any charge **should** be reasonable. Charges or payments arising on a resale are usually in respect of the following:

- For acting as an agent when selling a property
- For approving a buyer nominated by the seller
- For supplying information for Home Information Packs (from 2007), pre-purchase information, copies of insurance details and statements of accounts
- For registering an assignment or transfer
- For any legal service provided
- For any service charge or ground rent arrears or other outgoings provided for by the lease up until the date of the sale, including any interest chargeable under the lease.
- For the cost of internal decorations and any other repairs arising from the outgoing leaseholder's defaults, acts or omissions which are required by the lease
- For reserve fund contributions payable on resale under the terms of the lease

14.4

It is unlawful for anyone selling or managing property to racially discriminate in any of the following ways:

- In the terms on which a property is offered for sale
- By refusing to let a person buy
- By treating a person differently than others who want to buy
- By refusing to transfer a lease

14.5

Managers **should** have regard to the Statutory Code of Practice on Racial Equality in Housing (Wales) published by the Commission for Racial Equality.

Race Relations Act 1976 (as amended by Race Relations (Amendment) Act 2000)

Disability  
Discrimination Act  
1995

**14.6**

The Disability Discrimination Act 1995 makes it unlawful for those involved with selling and letting property to discriminate against disabled people.

S.330 of Proceeds  
of Crime Act 2002

**14.7**

Managers have a duty to report to the National Criminal Intelligence Service if they know or have reasonable cause to suspect that anyone connected to their business is or has been involved with money laundering. Managers are obliged to report without the knowledge or consent of the person suspected.

# 15.0

## New Schemes

15.1

Before agreeing with a developer to manage a scheme, managers **should** be sure they can provide:-

- a) long-term commitment
- b) reasonable charges
- c) an efficient and effective management service.

15.2

Managers **should** ensure that the developer agrees to use a suitable form of lease or freehold document, ideally a standard document which has been considered by the manager's legal advisors and allows leaseholders as much freedom as possible to sell their homes, subject to reasonable requirements which protect the retirement character of the estate (e.g. age restrictions). Any variations to the standard lease that the developer requires during sales **should** be subject to the agreement of the manager.

15.3

The Unfair Terms in Consumer Contracts Regulations 1999 No. 2083 apply to any new leases granted after 1 July 1995. Managers **should** be aware of the regulations when considering suitable forms of leases for new schemes.

15.4

Managers **should** ensure, whenever possible, that they are involved in the development of the scheme at an early stage and consulted by the developer about the design, management and maintenance costs; the size and location of the scheme manager/deputy scheme manager's accommodation and office; communal facilities; grounds; and the standard and quality of materials and equipment. At this stage, decisions can be made to ensure that the facilities, location, design and construction of the proposed development will complement the management service offered and ensure value for money for residents.

15.5

Managers **should** enter into a written legal agreement with the developer. If the developer has registered with the National House Building Council (NHBC) then the NHBC will require that the agreement should conform to the provisions of its Sheltered Housing Code. Careful consideration **should** also be given by the management organisation to the financial stability of the developer and to the possibility of the developer going into liquidation during the period of the management agreement.

15.6

The agreement **should** contain provisions detailing how and on what terms it may be possible for the first appointed management organisation to pass on some or all of the obligations in the agreement to another organisation.

- 15.7 Managers **should** ensure that there is a clause in the management agreement that requires the building to be covered by an approved warranty scheme.
- 15.8 Managers **should** be cautious about accepting the management of schemes that are offered by a developer towards the end of the building contract or when the developer does not seem interested in advice from the potential management organisation.
- 15.9 Managers **should** carefully and professionally calculate the first year's service charge using up to date information about the scheme, in the form of plans and specifications provided by the developer and considering all likely future costs. Managers **should** do all they can to ensure that information about services and charges provided by the developer is accurate, comprehensive and not misleading.
- 15.10 Managers **should not** work with developers who wish to artificially reduce initial service charges to improve sales.
- 15.11 Managers **should** be wary of agreeing arrangements which will lead to unnecessary future expense on the service charge account e.g. charges for leasing or poor standard equipment. Where such arrangements are agreed, proper provision **should** be made for likely future costs, and leasing arrangements **should** be brought to the attention of prospective purchasers.
- 15.12 Managers **should** ensure that the basis and extent of any equity retention in the lease is clearly explained in written form to potential purchasers.
- 15.13 Managers **should** ensure that the lease contains provision for establishment of a reserve fund adequate for all long-term major repairs renewals and improvements.
- 15.14 Managers **should** seek to ensure that management starts before the first purchaser moves into the development. It is important that scheme managers and other management staff are ready to provide the agreed services immediately. There **should** be effective liaison between the sales staff, management staff and scheme manager to ensure this.
- 15.15 Managers **should** provide developers with a Leaseholders' Handbook containing the information set out in Appendix 1 to be passed to potential purchasers' solicitors.
- 15.16 Managers **should** use their best endeavours to brief sales staff about the management services including the conditions of the lease, the role and responsibility of the scheme manager and other management matters.

# 16.0

## Discrimination and Equal Opportunities

### Prohibition of Discrimination

Human Rights Act 1998 Sch.1 Article 14.

16.1

Managers **must** ensure that they follow the European Convention on Human Rights as incorporated into UK law. In particular article 14 prohibits discrimination. The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1976 Race and Relations Act (as amended by Race Relations (Amendment) Act 2000) and 1975 Sex Discrimination Act

16.2

In the provision of services or the sale of properties managers **must** ensure that there is no discrimination within their organisation on the grounds of race, colour, nationality, religion, ethnic or national origin or sex, and **should** ensure that there is no discrimination on the grounds of marital status, age, sexual orientation or disability.

### Equal Opportunities

16.3

Managers **should** have an equal opportunities policy statement, procedures and practices covering management, maintenance, sales and recruitment.

### Elder Abuse

16.4

Managers **should** have policy and procedures in place to prevent and deal with allegations of abuse of older people appropriate to the size of the organisation and other circumstances.

### Racial Discrimination and Harassment

16.5

Managers **should** have anti-harassment policy and procedures in place to prevent and deal with harassment of residents and staff appropriate to the size of the organisation and other circumstances. The policy **should** support victims of discrimination or harassment.

16.6

Managers **should** make sure that they can communicate effectively with all leaseholders and make arrangements to translate material if needed.

S.21 of Race Relations Act 1976

16.7

Managers or their staff **must not** discriminate or harass a person

on racial grounds, or in the terms on which they offer to sell or let properties.

## Anti-Social Behaviour

16.8

Managers **should** have policy and procedures in place to prevent and deal with anti-social behaviour appropriate to the size of the organisation and other circumstances.

The Employment  
Equality (Age)  
Regulations 2006

16.9

Managers **must** have policy and procedures in place to prevent age discrimination in the workplace and vocational training.

## Age Discrimination

## Disability Discrimination

Disability  
Discrimination Act  
1995

16.10

Managers **must not** discriminate against disabled people when letting or selling property.

Disability  
Discrimination Act  
2005

16.11

The Disability Discrimination Act 2005 puts managers under a new duty to make reasonable adjustments to premises to assist disabled persons. This duty is in three parts: adjustments to policies, procedures and practices; changes to terms of lettings; and the provision of auxiliary aids. The duty does not apply to the common parts of schemes nor does it require managers to change the physical features of premises. Managers **should** follow the code of practice to be issued by the Disability Rights Commission in 2006.

Disability  
Discrimination Act  
2005

16.12

The Disability Discrimination Act 2005 also strengthens the rights of disabled persons who apply for consents to alter or improve their homes (not common parts) where the leases contain clauses that allow improvements or alterations.

## Data Protection

Data Protection Act  
1998

16.13

Managers **must** adhere to the provisions of the Data Protection Act 1998.

16.14

In addition to the legal requirements of the Data Protection Act and where the Data Protection Act does not apply, managers **should**:

- a) only solicit and record personal information about any individual if it is in the interests of that individual;
- b) only make available information about an individual to other people if it is in the interests of that individual and with his written consent; and

- c) allow any individual to view the personal information they hold about that individual.

# 17.0

## Transfers of the Management of Schemes

### The Right to Buy the Freehold

Part 1 of the 1993 Act

17.1

Leaseholders of flats have the right to buy the freehold of their building if they and their building qualify. They have this right even if the landlord does not wish to sell and after buying the freehold they can decide for themselves how to manage the building.

17.2

To qualify leaseholders **must** have leases that were first granted for more than 21 years. Shared ownership leases do not qualify unless the leaseholders now own 100% of the equity.

17.3

For the building to qualify at least two thirds of the flats in it **must** be owned by leaseholders that qualify (see paragraph 17.2 above) and no more than 25% of the building **must** be in non-residential use.

17.4

The process to be followed is not explained in detail here. In essence however, the leaseholders will make an offer of a price to buy the freehold to the landlord and seek to agree the price and other terms. If terms cannot be agreed then either the leaseholders or the landlord may refer the dispute to a LVT, which will decide the terms and price for the freehold according to a formula set out in statute.

### The Right to Seek the Appointment of a Manager

S.21- 24 of 1987 Act as amended by S.160 of & Sch 9 to 2002 Act.

17.5

Leaseholders have the right to apply to the LVT for the appointment of a manager if unhappy with their current one. This right does not apply if the landlord is an RSL. When deciding whether to appoint a manager the LVT will decide whether it is satisfied that:

- 1) The landlord or manager is in breach of his obligations to a leaseholder under the lease which relates to the management of the premises or part of the premises; or
- 2) Unreasonable service charges have been made or are proposed or likely to be made; or
- 3) The landlord or manager is in breach of any relevant provision of a code of practice approved by the National Assembly for Wales under Section 87 of the 1993 Act (such as this one by the ARHM); or
- 4) The landlord or manager has failed to comply with S.42 and S.42A of the 1987 Act with regard to holding service charge monies in trust; and

- 5) Other circumstances exist in which it is just and convenient for the order to be made.

Leaseholders need only prove one of the above grounds. However, if they intend to prove grounds 1, 2, 3, or 4 they **must** also satisfy ground 5 to the LVT that it is just and convenient in the circumstances to make an order to appoint a new manager.

## The Right to Manage (RTM)

- 17.6** Leaseholders of flats have the right to take over the management functions of their landlord, as a group, if they and their building qualify. This right to manage is different to the right to seek the appointment of a manager, because it can be used by leaseholders even if their landlord or current manager is not at fault.
- 17.7** To qualify leaseholders **must** have leases that were first granted for more than 21 years. Shared ownership leases do not qualify unless the leaseholders now own 100% of the equity.
- 17.8** For the building to qualify at least two thirds of the flats in it **must** be owned by leaseholders that qualify (see paragraph 17.7 above) and, no more than 25% of the building **must** be in non-residential use. Buildings owned by a local housing authority do not qualify, nor do buildings where there are different freeholders of parts of the building, or where there is a resident landlord in a building with no more than 4 units. It also does not apply where the right has already been exercised and a RTM Company is already in place, or where the right has been exercised but the RTM Company has ceased to be responsible for the management within the previous 4 years.
- 17.9** Leaseholders can only use this right as a group and **must** form a RTM Company to do so. It is the RTM Company that will take over the management functions.
- 17.10** All qualifying leaseholders have the right to become members of the RTM Company and **must** be invited to do so by those leaseholders who form the RTM Company. For the right to manage to proceed the RTM Company **must** have members equal to 50% or more of the total number of flats in the building. The landlord also has the right to become a member of the RTM Company once the right has been exercised.
- 17.11** The RTM Company takes over the management functions by serving a claim notice on the landlord, containing detailed information prescribed by statute. The landlord then has 28 days in which to accept the claim or issue a counter notice. The landlord may only deny the claim to the right to manage if it can be shown the leaseholders or the building or the RTM Company itself do not qualify.

**17.12** The right to manage is not meant to be an adversarial process. If the claim is accepted the landlord **must** hand over to the RTM Company all management functions according to the prescribed procedure. If the claim is disputed either the RTM Company or the landlord can refer the matter to a LVT to decide if the claim to the right to manage is correct.

**17.13** The RTM Company does not have to pay the landlord any compensation for loss of management if it successfully claims the right to manage. However it will have to pay the landlord's reasonable costs arising from the claim. Disputes about the reasonableness of a landlord's costs may be referred to a LVT. If a manager or landlord is served with a claim notice it may be advisable to consider seeking independent legal advice.

## Procedures for Transfers of Management

**17.14** Where legal rights are being used to transfer management, managers **should** always ensure that they comply with the requirements laid down by the legislation, and also with any direction given by a court or tribunal. The procedures that follow in this section are good practice that managers are recommended to use in addition to any legal requirements where leaseholders are seeking to change their manager using their legal rights, or where the choice of manager is already in the hands of the leaseholders and they decide to change manager.

**17.15** If a prospective manager is invited to meet a group of leaseholders seeking to change their current manager, then the prospective manager **should** advise the landlord and current manager of the approach, unless specifically requested not to do so in writing by the leaseholders.

**17.16** The current manager **should** provide leaseholders seeking to change managers with any reasonable information within 28 days of a request. A reasonable charge may be made for copying of any documents.

**17.17** Where a group of leaseholders wish to choose a prospective new manager then the prospective manager **should** provide the leaseholder group with information in a format that allows leaseholders to compare alternative managers.

**17.18** The information to be provided by managers **should** include:

- a budget for services in the same format as the current manager's budget
- a plan explaining how services will be delivered and to what standard
- any changes proposed to current services provided should be clearly identified
- what will happen to any existing scheme manager(s)
- the management fees and list of management and extra

- duties (as in paragraphs 3.2 and 3.5 of this code)
- the draft management agreement that is proposed to be used
- and any other costs and benefits that will affect the scheme.

**17.19** Prior to a decision on a transfer proposal, a meeting at a time and place convenient to leaseholders **should** be called to which all leaseholders **should** be invited for the purpose of enabling any manager involved in the transfer proposal to make a presentation and to be questioned by leaseholders. A minimum of 2 weeks notice of the meeting **should** be given and all leaseholders **should** have the information specified above at least 7 days in advance of the meeting.

**17.20** The decision to appoint a new manager by a group of leaseholders **should** be taken by a secret postal ballot.

**17.21** The ballot paper **should** contain the motion to be considered. It **should** state clearly the majority required to pass the motion, who will count the ballot and how the count will take place. The period allowed for votes to be returned **should** be a minimum of 1 calendar month.

**17.22** The ballot papers **should** be returned to and counted by a person or organisation independent of the landlord, manager, residents' association, proposed residents' management company and any leaseholder. It **should** not be possible for the votes of any leaseholder to be identified by other leaseholders or managers.

**17.23** An independent person **should** scrutinize the ballot papers.

**17.24** Each leaseholder may cast one vote and joint leaseholders will receive one ballot paper. Where the leaseholder is not resident the ballot paper **should** be sent to any alternative address provided.

**17.25** The manager **should** inform all leaseholders of the result of the ballot (in writing by letter or a notice on the scheme notice board) including the total number of votes counted for, counted against, the abstentions from voting on the motion, and any votes rejected from the count with the reason for rejection.

**17.26** Once a decision to transfer management has been taken then managers **should** cooperate fully with the handover of records and accounting information that are required.

## Scheme Managers and Transfers

**17.27** Managers and RTM Companies **must** comply with the TUPE regulations (Transfer of Undertakings Protection of Employment Regulations). Managers **should** be particularly sensitive to the

needs of scheme managers and other employees at the scheme when a transfer of management is proposed. Professional advice **should** be taken about the employment rights of staff.

# Appendix One

## Leaseholders' Handbook

The Leaseholder's Handbook referred to in paragraphs 11.16 and 15.15 of this Code **should** contain the following information, which **should** be clearly and fully described using simple language. The handbook as described below **should** be sufficient to meet the requirements of the Purchasers' Information Pack as set out in the National House Building Council Sheltered Housing Code 1990. The handbook may also be called a purchasers information pack or owners or residents handbook, or such other name as the manager thinks appropriate. A generic version of the handbook for the manager's schemes pointing out that each scheme may vary in detail is an acceptable way of producing a leaseholders' handbook.

- The name and address of the landlord and/or freeholder
- Details of the management organisation, its role and whether it owns the freehold of the scheme or is party to the lease in any way
- A description of the duties of the scheme manager, including hours of service, and how back-up support or emergency cover is provided during the periods of absence, together with details of the emergency alarm system and how it works
- A description of all the services for which the leaseholder is being charged, including buildings insurance
- How leaseholders should report repairs and target time scales for the completion of repairs.
- A full, clear, complete and unambiguous breakdown of all periodic or one-off charges that the leaseholder will be expected to pay, together with any necessary explanations including a time scale for their review
- The legal rights of leaseholders
- Information on consultation and complaints procedures and on residents' associations
- A clear explanation of the main terms of the lease or freehold transfer including the landlord's obligations
- Any detailed rules concerning the management of the estate
- Re-sale arrangements
- The handbook should indicate how copies of the management organisation's policies on equal opportunities, confidentiality and access to information may be obtained.

## Appendix Two

# Health and Safety Codes and Regulations

Please note that this list is not an exhaustive list. A full list of publications can be obtained from the Health and Safety Executive.

| APPROVED CODES OF PRACTICE (ACOP) & GENERAL GUIDANCE                   | REFERENCE ID NUMBER |
|--|---------------------|
| Essentials of Health & Safety at Work                                  | 0-7176-6179-2       |
| First Aid at Work(Health and Safety (First Aid) Regulations 1981)-ACOP | 0-7176-1050-0       |
| Guide to RIDDOR 1995   | 0-7176-2431-5       |
| The Management of Health and Safety At Work Regulations 1999-ACOP      | 0-7176-2488-9       |
| The Control of Legionella Bacteria in Water Systems-ACOP               | 0-7176-1772-6       |
| Work with Materials Containing Asbestos - ACOP                         | 0-7176-6206-3       |
| A Comprehensive Guide to Managing Asbestos in Premises                 | 0-7176-2381-5       |
| The Management of Asbestos in Non-Domestic Premises - ACOP             | 0- 7176-6209-8      |
| Control of Substances Hazardous to Health Regulations 2002 As Amended  | 0-7176-2981-3       |
| Health and Safety Law Poster   | 0-7176-2493-5       |
| Workplace (Health, Safety and Welfare) Regulations 1992-ACOP           | 0-7176-0413-6       |
| The Health and Safety (Safety Signs and Signals) Regulations 1996      | 0-7176-0870-0       |
| Personal Protective Equipment at Work - Guidance on Regulations 1992   | 0-7176-6139-3       |
| Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)      | 0-7176-2461-1       |

| APPROVED CODES OF PRACTICE (ACOP) & GENERAL GUIDANCE            | REFERENCE ID NUMBER |
|---|---------------------|
| Safe Use of Lifting Equipment-ACOP                              | 0-7176-1628-2       |
| Safety in the Installation & Use of Gas Systems & Appliances    | 0-7176-1635-5       |
| The Manual Handling at Work Regulations 1992-Guidance           | 0-7176-2823-X       |
| Work with Display Screen Equipment - Guidance                   | 0-7176-2582-6       |
| Electricity at Work-Safe Working Practices                      | 0-7176-2164-2       |
| Maintaining Portable & Transportable Electrical Equipment-Guide | 0-7176-2805-1       |
| Maintaining Portable Electrical Equipment in Offices-Guide      | 0-7176-1272-4       |
| The Provision and Use of Work Equipment(PUWER)-ACOP             | 0-7176-1626-6       |
| The Work at Height Regulations 2005 - a brief guide             | 0-7176-2976-7       |
| Managing Health and Safety in Construction - ACOP               | 9-7807-1766-2234    |

To order the above publications from the Health and Safety Executive:

Tel.: 01787 881165

Fax.: 01787 313995

E mail: [hsebooks@prolog.uk.com](mailto:hsebooks@prolog.uk.com)

For general information about HSE contact:

HSE Infoline: 0845 345 0055

E mail: [hse.infoline@connaught.plc.uk](mailto:hse.infoline@connaught.plc.uk)

Website: [www.hse.gov.uk](http://www.hse.gov.uk)

# Appendix 3

## Code of Conduct for Managers

This Code of Conduct for Managers and Scheme Managers sets out established principles of the way that managers should perform their roles. The ARHM wishes to thank the Centre for Sheltered Housing Studies for its assistance in publishing these principles. Managers should be able:

- 1) To offer equal opportunities and fair treatment to all residents without discrimination on account of race, gender, disability, religion, age or sexual orientation.
- 2) To recognise, respect and safeguard the individuality and personal rights of each resident whilst acknowledging the responsibility to others, and to encourage residents to accept their responsibility towards each other.
- 3) To understand and respect the confidentiality of knowledge and information relating to individual residents and the employer.
- 4) To facilitate independence and the well being of residents both as individuals and within the group as a whole.
- 5) To be sensitive and impartial in the delivery of services.
- 6) To act always with honesty and integrity.
- 7) To ensure that professional responsibility is never sacrificed for personal interest.
- 8) To establish and maintain high standards of personal conduct and professional relationships.
- 9) To acknowledge the need for continuing professional training and self-development.
- 10) To ensure that internal procedures relating to statutory obligations of the employer are understood and implemented.
- 11) To understand the role of other service providers and significant people in the lives of residents and be committed to working effectively with them.
- 12) To be aware of and to accept a responsibility to contribute to the setting of objectives, policies and procedures of the employer.

# Appendix 4

## Parts of the Commonhold and Leasehold Reform Act 2002 not yet brought into force but relevant to this Code

### A Designated Bank Accounts (See Paras. 2.8- 2.12 of this Code)

S.156 of 2002 Act

A1

In all cases, except where the landlord is a registered social landlord, managers must hold service charge monies for each group of service charge payers paying towards the same costs in a designated bank account with a relevant financial institution. An account is a designated account if the relevant financial institution has been informed in writing that monies held in it are to the credit of a trust fund, and no other funds are held in that account. Further statutory regulations may also be made to specify what is recognised as a designated account.

S.156 of 2002 Act

A2

Leaseholders or the secretary of recognised residents association have the right to be given proof by the manager that a designated bank account is held. They can do this by asking to inspect documents proving the holding of the account, and then they have the right to take copies of documents provided. The manager **must** make facilities of the inspection of relevant documents of proof within 21 days of receiving a notice in writing to do so from a leaseholder or secretary of a recognised residents association. The cost to the manager of allowing the inspection **must** be free, but can be reflected in costs of management. Any other costs, for example copying of documents, may be the subject of a reasonable charge.

S.156 of 2002 Act

A3

Any leaseholder who has reasonable grounds to suspect that service charge monies are not held in a designated account may withhold payment of service charge, and any provisions in the lease relating to non-payment or late payment of service charges do not have effect for the period for which the service charge is withheld.

Failure by a manager to hold service charge monies in a designated bank account is a summary offence, liable to a fine of up to £2,500 on conviction. A local housing authority may bring proceedings.

## **B Right to a Regular Statement of Account (See Paras. 2.13-2.22 of this Code)**

S.152 of 2002 Act

S.152 (which was to replace section 21 of the 1985 Act) will not be implemented in the form set out in the 2002 Act. However, the Government remains committed to strengthening leaseholders' rights in obtaining key information about service charges in the form of a regular statement of account, and intends to develop proposals to achieve this.

## **C Right to a summary of rights and obligations with service charge demands**

S.153 of 2002 Act

A demand for a service charge **must** be accompanied by a summary of the rights and obligations of leaseholders in relation to service charges. A leaseholder may withhold payment of a service charge that has been demanded without the summary being provided, and any provision relating to non-payment or late payment of service charges in a lease does not have effect in relation to the period for which the service charge is withheld.

## **D Right to inspect supporting documents to accounts (See Paras 2.28 – 2.33 of this Code)**

S.154 of 2002 Act

**D1**

Because this section is linked to S.152 of the 2002 Act (above), which is not to be implemented in its existing form, it is also not possible to implement this section (S.154). However, when proposals have been developed to require a regular statement, the following rights, similar to those already existing, are also likely to be implemented.

**D2**

A leaseholder or secretary of a recognised tenants' association can, by notice in writing, ask to inspect all accounts, receipts and relevant documents supporting the regular statement of account that would be required under S. 21 of the 1985 Act. This would need to be done within 6 months of when a regular statement would need to be supplied..

**D3**

A leaseholder or secretary of a recognised tenants' association can request managers to take copies of such accounts, receipts and relevant documents and either send them or allow them to be collected, as the leaseholder or secretary prefers.

**D4**

The landlord has 21 days from the date of receipt of notice in writing to comply with the requests in paragraphs D2 and D3.

**D5**

Any landlord who does not possess any part of the information required or documents necessary to comply with paragraphs D2

and D3, **must** immediately inform the leaseholder or secretary of the recognised tenants' association, of the name and address of the superior landlord who does hold the information. The right to inspect supporting documents then applies in relation to the superior landlord.

## **E The Right to Buy the Freehold of Flats (See Paras. 17.1 -17.4 of this Code)**

S.121-124 of 2002  
Act

Further detailed work is required on these provisions by the Government before it can be implemented. However, if implemented, leaseholders of flats **must** form a company called a Right to Enfranchise Company (RTECo) if they want to buy the freehold. It is the RTECo that will buy the freehold. All leaseholders would have the right to participate and become members and **must** be invited to do so by the founders of the RTECo. For the RTECo to be eligible to buy the freehold, the number of qualifying leaseholders that are members of the company **must** be equal to or more than 50% of the number of flats contained in the block.



## Appendix 5

# Contracts of Employment for Scheme Managers

- 1) Managers **should** ensure that each scheme manager is issued with a comprehensive contract of employment which clearly defines the conditions of service. Points which should particularly be addressed are salary and benefits, the hours to be worked, annual leave, sick leave and sick pay, pension arrangements, notice required to terminate the employment, the grievance procedure and disciplinary code.
- 2) A contract of employment can either be in writing or an oral agreement, or a combination of both. Once agreed, it is legally binding and, generally, cannot be varied without the employee's agreement. Employment law, however, requires employees to receive from their employer within two months of starting work, a written statement setting out the main terms of their employment conditions. The legislation sets out the areas on which terms must be provided. Employees who do not receive a written statement can make a complaint to an Employment Tribunal.
- 3) On notice of termination of employment, the law specifies minimum periods which the employer **must** give to the employee: one week's notice for service of a month or more up to (but under) two years; an additional week for each complete year of service up to a maximum of twelve weeks for twelve or more year's service.
- 4) Disciplinary and grievance procedures **should** be conducted in a fair and objective manner. Dismissed employees can seek a remedy for breach of contract through the Employment Tribunals (if the employment has ended) or the civil courts if any company disciplinary or grievance procedure was not followed and if the terms formed part of their contract of employment. The Advisory, Conciliation and Arbitration Service (ACAS) has published a Code of Practice on Disciplinary procedures.
- 5) Managers **should** ensure that the terms and conditions imposed on the occupation of the scheme manager's dwelling should be such as to not create security of tenure and that the scheme manager notifies you of any person who is or will be living in the property.



## Appendix 6

# Objects of the Association of Retirement Housing Managers

The ARHM represents management organisations who together manage over 95,000 private sheltered housing flats, houses and bungalows in Wales and England. The Association is committed to high standards and ethics in the management of private sheltered housing.

The main objects of the ARHM are to:

- Promote high standards of practice and ethics in the management of retirement housing and in the provision of services to residents.
- Set standards for membership of the Association and promote quality and professionalism through training and education of members.
- Monitor standards of members including implementing a compliance-testing regime so that further improvements in standards can be made.
- Consider and comment on matters affecting the Association and retirement housing, and to promote the views of the Association in the business, social, educational and political communities.
- Investigate and determine complaints against members.
- Provide the principal forum for the discussion and progression of issues facing retirement housing.
- Promote the benefits of retirement housing.
- Provide and disseminate information on retirement housing and to act as a source of professionally based knowledge.
- Foster the exchange of ideas and information between members and organisations.

