Code of Practice

2nd edition

Service Charge Residential Management Code

and Additional Advice to Landlords, Tenants and Agents

Approved by the Secretary of State for England under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

The Code applies to leasehold properties where a service charge, which varies according to the expenditure, is payable, and the landlord is not a public sector authority or Registered Social Landlord. It is not applicable to commonhold properties.

RICS the mark of property professionalism worldwide

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This Code is effective from 6 April 2009.

Please note: References to the masculine include, where appropriate, the feminine.

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The Royal Institution of Chartered Surveyors (RICS) Service Charge Residential Management Code

- The following parts of this document are approved by the Secretary of State for England under section 87 of the *Leasehold Reform, Housing and Urban Development Act* 1993:
  - Parts 1–21
  - Appendices I and II
- This Code has been updated and amended and incorporates the provisions of the *Commonhold and Leasehold Reform Act* 2002 and, where appropriate, the *Housing Act* 2004.
- This Code applies to leasehold properties where a service charge, which varies according to the expenditure, is payable, and the landlord is not a public sector authority or Registered Social Landlord. It is not applicable to commonhold properties.
- The following parts of this document **have not** been approved by the Secretary of State for England:
  - Appendix III
  - Additional Advice to landlords, tenants and agents

Note for RICS members

RICS members are reminded that this document has RICS guidance note status.

Special note

The Code does not contain authoritative or comprehensive statements of the relevant law. If you are in doubt about the statutory rights or are considering taking legal action you would be well advised to consult a solicitor, qualified surveyor or other suitably qualified professional or to seek information from a Citizens Advice Bureau, community legal advice centre, or through the Leasehold Advisory Service (LEASE). You may be able to get help with all or part of the cost of legal advice under the legal aid scheme.

The existence of this document, and where it can be seen and/or purchased, should be brought to the attention of all tenants of relevant private sector dwellings.

This Code only applies to properties in England. Except where indicated in the right-hand column of the text, all the requirements are upon the manager (who may be the landlord, a managing agent, or another – see paragraph 1.12 of the Code) who is therefore addressed as 'you'. In this connection it is therefore important to read the definitions in Part 1 before studying the Code itself.

Some paragraphs in the Code are deliberately repeated in different sections for clarity.

There is a separate approved Code of Practice which applies where tenants pay rent only. This is known as the RICS *Rent Only Residential Management Code*.

Members of any professional bodies continue to be bound by the rules of those bodies, subject to their being any statutory requirements that conflict with those rules. This Code does not override any statutory requirement, and you should be aware of all the applicable legislation concerning the management of residential premises and service charges.

Leasehold (future legislative) changes

You should be aware of the changes already made by the *Commonhold and Leasehold Reform Act* 2002, but also those yet to be made, in particular those relating to accounting for service charges and the amendments that are proposed to section 21 of the *Landlord and Tenant Act* 1985, and section 42 of the *Landlord and Tenant Act* 1987.

To ensure that this document maintains its effectiveness readers are invited to make comments in writing to RICS so that its contents can be kept under review. Please send your comments to:

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RICS acknowledges with thanks the assistance of the following organisations in the revision of this Code:

- Association of Residential Managing Agents (ARMA)
- Department for Communities and Local Government (CLG)
- Institute of Residential Property Management (IRPM)
- Residential Property Tribunal Service (RPTS)
- Chartered Institute of Housing (CIH)
- The consultative committee of accountancy bodies:
  - Institute of Chartered Accountants in England & Wales (ICAEW)
  - Association of Chartered Certified Accountants (ACCA)

The Code incorporates, where appropriate, the legislative changes made by part 2 of the *Commonhold and Leasehold Reform Act* 2002 in respect of residential leasehold and statutory instruments made under that Act. Any reference to a statute or statutory instrument is to be taken as being a reference to it as amended by any subsequent Act or instrument.

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Parts of this document that have been approved by the Secretary of State

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Parts of this document that have not been approved by the Secretary of State

Abbreviations
The following abbreviations are used where statutory references are given in the right-hand column:
S/s section
Ss/ss sections

Foreword and application of the Code

Foreword

Whilst the Secretary of State has approved this Code under Section 87(7) of the *Leasehold Reform, Housing and Urban Development Act* 1993 approval of the Code does not have the effect of making a breach of the Code a criminal offence or create civil liability. However, the contents of the Code may be used in evidence and taken into account, if relevant, in court and tribunal proceedings, especially those for the appointment of a new manager where landlords or managers have failed to comply with this Code. (See section 24 of the *Landlord and Tenant Act* 1987, as amended by section 85 of the *Housing Act* 1996.)

This Code has been prepared to promote desirable practices in respect of the management of residential leasehold property. Successful management can only be achieved through cooperation and a mutual understanding of the procedures necessary for the effective control of property as well as of the problems that can arise. The Code is, therefore, intended to be read by landlords, tenants, occupiers and managers of leasehold property and managing agents. Although most of the Code is aimed directly at the managers of residential leasehold property, parts are specifically intended for other parties such as owners and professional advisers. Whilst there are cost implications of managing residential properties to the standard specified by this Code, the benefits in terms of improved service and the level of satisfaction should make any additional cost worthwhile in the long run.

Application of the Code

The Code applies only to residential leasehold properties in England but it deals with flats, houses and all other dwellings whether in towns or in the country, on estates, in groups or on their own. It covers all lengths of leases and statutory tenancies where variable service charges are payable. The Code does not apply where the landlord is a public sector authority, or a Registered Social Landlord, but it does apply where a public sector authority or Registered Social Landlord is an agent managing for a private sector owner.

In this Code, whenever a statutory reference is given, there is a legal obligation to act in accordance with the statute. In this Code the word 'must' is used to indicate a legal obligation – breaches could lead to civil and/or criminal action. The word 'should' is used to indicate good practice.

In considering the guidance given, such factors as the age and location of the property, the terms of occupation, the level of payment for services and the management fee need to be taken into account. Fundamentally, the following should be considered when taking management decisions to reflect this Code: statutory requirements, terms of the lease or tenancy agreement, cost effectiveness, convenience, efficiency, reasonableness and the quality of service. Whilst compliance with the guidance given is not mandatory, managers should be able to justify departures from it. You should be aware that there is an RICS Management Code for 'Rent Only' property as well: the *Rent Only Residential Management Code.*

Part 1
Definitions applicable in this Code

It is difficult to avoid using terms which are complicated or which have different meanings to different people. As a result some of the words used in this Code are defined as follows:

1.1 Must/should

In this Code the word 'must' is often used to indicate a legal obligation. Breaches could lead to either civil and/or criminal action. The word 'should' is generally used to indicate good practice, though there is often a very close correlation between a statutory requirement and good practice.

1.2 You

Except where indicated in the right-hand column all the requirements are for the manager, who is addressed as 'you'.

1.3 Client money

'Client money' is the term used to describe all money held or received by a manager over which they have control but which does not belong to the manager or their practice. It is not restricted to money held on behalf of clients of a practice. It can therefore include rents, service charges, reserve funds, deposits and retentions in respect of taxation obligations.

'Client money' may, therefore, be held on behalf of the client, a management company, the tenants, or in trust either on behalf of the landlord or on behalf of the landlord and tenant, i.e. as stakeholder.

Where the landlord holds money within this definition it should be treated as 'client money' and the rules in Part 4 of this Code should be complied with

It is a statutory requirement to hold service charge contributions in trust. Section 42 of the *Landlord and Tenant Act* 1987 enforces this obligation.

S42 – Landlord and Tenant Act 1987

1.4 Flat

The word 'flat' covers any dwelling unit separated from others horizontally (and possibly vertically as well), or from commercial premises. However, the 'flat' could be a maisonette or duplex on more than one floor, and can be in purpose built blocks as well as conversions and mixed use buildings or estates.

1.5 Gender/plurals

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

1.6 Ground rent

A rent payable to the landlord by the tenant on a specified date as required by the lease, subject to a notice in a prescribed form being served by the landlord.

1.7 House

Any dwelling for the purposes of this Code which is not a 'flat' is referred to as a 'house'. (This definition is not the same as the definition of 'house' contained in the *Leasehold Reform Act* 1967).

1.8 Landlord

The person or company which owns and rents or leases a flat or house. This person may also own the freehold or may have a superior leasehold interest in the property themselves, but is not the manager as defined in paragraph 1.11.

(Note: For convenience this Code has been written as though the manager is not the same person as the landlord. Where the manager is the landlord, he is responsible for complying with the Code).

1.9 Lease/tenancy agreement

The legal contract between the landlord and the tenant by which the tenant is allowed to occupy the subject property (flat or house) setting out the terms and conditions that both parties must comply with.

1.10 Leaseholder/lessee/tenant

The person who, or company which, owns the leasehold interest and is liable to pay the service charge and ground rent under the terms of the lease. Throughout this code the term 'tenant' has been used for consistency but this also includes the term lessee and leaseholder.

1.11 Manager

In this Code the person having day-to-day control of the management of a dwelling is called the 'manager'. This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, or a group of flat owners who have formed themselves into a formal management or maintenance company (a Residents' Management Company), (which could be limited by share or guarantee), or a recognised or 'informal' tenants' association. It could also be a Right to Manage company set up in accordance with the *Commonhold and Leasehold Reform Act* 2002.

1.12 Managing agent

A person or organisation which acts on behalf of the landlord (or Right to Manage company) within terms of reference and/or instructions from the landlord (or Right to Manage company), subject to any legal restrictions.

1.13 Money laundering

The ways of hiding a source of money which has been gained by illegal means. Please refer to paragraph 3.31 for further information.

1.14 Residents'/Tenants' Association

A group of tenants with or without a formal constitution or corporate status, is called a 'residents' association'. It is also possible to have a residents' association 'recognised' by law and with a formal constitution. This is known as a 'Recognised Tenants' Association' which applies where a residents' association successfully gains formal recognition from the landlord or a Rent Assessment Panel. Formal recognition confers extra rights and allows the secretary of the association to act on behalf of individual tenants, and is referred to in more detail in Part 17 of this Code and the Additional Advice.

1.15 Residents' Management Company (RMC)

An organisation which may be referred to in the lease, which is responsible for the provision of services, and manages and arranges maintenance of the property, but which does not necessarily have any legal interest in the property.

1.16 Right to Manage (RTM) company

A specific company created by the *Commonhold and Leasehold Reform Act* 2002 enabling qualifying tenants of the building they live in to take on the management without proving their existing manager is at fault. RTM is particular to leasehold flats and maisonettes, but not to leasehold houses or estates.

1.17 Service charge

Where an amount is payable by a tenant as part of or in addition to rent in respect of services, repairs, maintenance, insurance, improvements or costs of management (and the amount may vary according to the costs incurred or to be incurred), this is called 'service charge'.

1.18 SI

This refers to a Statutory Instrument (Regulations or an Order) that has been made by the Secretary of State to supplement the primary legislation and which must be complied with.

Part 2
Appointment and charges of managing agents

2.1 Managing agents and their clients should enter into written management contracts. The basis of fee charging and duties should be contained in the agreement.

Under current law tenants are entitled to obtain the following from the landlord/managing agent:

- information about the landlord;

  Ss 1 and 2 – Landlord and Tenant Act 1985

  Ss 47 and 48 – Landlord and Tenant Act 1987

- information about service charges;

  Ss 21, 22 and 23 – Landlord and Tenant Act 1985

- information/notification about major works and long term agreements; and

  Ss 20 and 20ZA – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

  Service Charges (Consultation Requirements) (England) Regulations 2003 (and correction) (SI 2003/1987)

  Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

- information about insurance.

  S30A and schedule – Landlord and Tenant Act 1985

In anticipation of requests from tenants, managing agents should prepare a basic summary of their terms and duties which can be issued if appropriate to interested parties.

2.2 Contracts between landlords and managing agents are normally governed by the *Supply of Goods and Services Act* 1982 (as amended), which implies into such contracts terms to the effect that services shall be provided to a reasonable standard, time and cost (usually previously agreed).

Ss 13, 14 and 15 – Supply of Goods and Services Act 1982

Unfair Terms in Consumer Contract Regulations 1999 (SI 1999/2083). (Amended by the Unfair Terms in Consumer Contracts (Amendment) Regulations 2001 (SI 2001/1186))

2.3 Your charges should be appropriate to the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that tenants can budget for their annual expenditure. However, where the lease specifies a different form of charging, the method in the lease will be used by managing agents.

2.4 Subject to the terms of any written agreement, for an annual fee (where the level of service provided will normally have regard to the amount of the fee), a managing agent should normally carry out the following work:

a) Collect service charges from tenants.

b) Instruct, with the clients consent, solicitors or debt recovery agents in the collection of unpaid service charges, subject to any statutory procedures that need to be followed.

c) Prepare and submit service charge statements.

d) Pay for general maintenance out of funds provided and ensure that service charges and all outgoing monies are used for the purposes specified under the lease and in accordance with legislation.

e) Produce annual spending estimates to calculate service charges and reserves, as well as administering the funds.

f) Produce and circulate service charge accounts and supply information to tenants and any residents' association, liaising with and providing information to accountants where required.

g) Administer building and other insurance if instructed and authorised, subject to Financial Services Authority Regulations.

h) If instructed, on behalf of clients engage and supervise staff such as caretakers, gardeners and cleaners (if staff are employed at a property the annual fee may be increased to reflect the additional work).

i) Arrange and manage contracts or services in respect of, for example, lifts and boilers.

j) Arrange periodic health and safety and fire risk assessments in accordance with the statutory requirements, and, where necessary, in liaison with the relevant public authorities.

k) Visit the property to check its condition and deal with minor repairs to buildings, plant, fixtures and fittings. An appropriate frequency for visits should be agreed with the client.

l) Deal reasonably and as promptly as possible with enquiries from tenants having regard to any requirements or constraints in the written agreement.

m) Keep records on tenancies.

n) Keep clients informed on changes in legal requirements, including any statutory notices and other requirements of public authorities, and check compliance with lease terms.

o) Advise on day-to-day management policy.

2.5 As part of the terms of engagement, a 'menu' of charges for duties outside the scope of the annual fee could include the following (some of these charges may be the responsibility of individual tenants):

a) preparing specifications, obtaining tenders and supervising substantial repairs or works;

b) preparing statutory notices and dealing with consultations where qualifying works or qualifying long term agreements are proposed (see paragraphs 7.4 and 7.5);

c) attending courts and tribunal proceedings in connection with the property managed;

d) advising on rating, planning, improvement, other grants and valuations;

e) handling insurance claims (where authorised by the Financial Services Authority to carry out insurance mediation activities);

f) preparing replacement-cost assessments for insurance purposes;

g) considering tenants' applications for alterations, or formal recognition of a tenants' association;

h) advising on and dealing with assignments of leases, subletting, change of use and Home Information Pack requests;

i) preparing schedules of dilapidation or condition in respect of individual dwellings;

j) providing copies of documents, insurance policies and accounts to clients or tenants;

k) employing and working with other advisors in connection with the property;

l) charging the cost of overseas telephone calls and faxes, etc. that are necessary for the purposes of carrying out their work listed in paragraph 2.4;

m) giving information to prospective purchasers, vendors or their agents of the leasehold interests in the individual dwelling, as required under Home Information Pack Regulations. Answering specific enquiries from tenants and prospective purchasers or their legal advisers, including pre-contract enquiries (see also Part 16);

n) providing accommodation for meetings and inspections of documents in connection with the property managed;

o) working outside normal office hours;

p) dealing with non-routine matters;

q) advising on termination and handover of management and service contracts;

r) carrying out the duties of a company secretary;

s) recruiting and employment of site based staff;

t) undertaking additional duties with a landlord as required under the Right to Manage; and

u) advising on and dealing with long term maintenance plans.

2.6 Insurance commissions and all other sources of income to the managing agent arising out of the management should be declared to the client and to tenants.

2.7 The managing agent should give, consistent with the terms of the contract with the client, reasonable and adequate notice of any increases in charges.

2.8 If the managing agents' charges are agreed to be subject to indexation, the index to which they are linked should be agreed in advance in writing.

Part 3
Manager's duties/conduct

3.1 You should have effective and fair policies and procedures for dealing responsibly with management matters.

3.2 In undertaking a management function you must observe the terms of the lease and comply with the law.

3.3 In the interests of the landlord and other tenants, in the course of management of the property, and if required under the terms of the lease, you should seek and validate appropriate references for prospective tenants. These should not be disclosed to outside parties without the written consent of the subject tenant(s) and referee(s), unless there is a legal obligation to do so.

Data Protection Act 1998

3.4 You should respond promptly and suitably to reasonable requests from tenants for information or observations relevant to the management of property. Relevant information may be provided, if the lease/tenancy permits or if it is reasonable and first agreed with the tenant, if appropriate, that the tenant should pay a reasonable charge. If there is a conflict with your duties to the landlord you should advise the tenant to seek independent advice. You should never mislead your clients or tenants.

3.5 Where the manager is a managing agent, there should be a written management contract between the manager and the client.

3.6 Subject to the requirements of legislation, the landlord will nearly always have the ultimate authority over any other manager. One exception to this would be where the tenants have exercised the Right to Manage (see Appendix II). Where instructions from the landlord put that manager in contravention of the Code this should be brought to the attention of the landlord and if the landlord persists in those instructions the manager should consider whether to decline to act further for the landlord.

3.7 You must not discriminate on the grounds of gender, race, sexual orientation, religion, marital status, age or disability.

Sex Discrimination Act 1975

Race Relations Act 1976

Employment Act 2002 (Note: The Employment Act 2008 comes into force in 2009)

Disability Discrimination Act 2005

3.8 You should have policies and procedures for responding to incidents of harassment. For example, you should be prepared to support tenants who are harassed or victimised on racial grounds and you should remove racist graffiti from properties under your management without delay. All offensive graffiti should be removed promptly.

3.9 You must not do anything likely to interfere with the peace or comfort of residential occupiers, or withdraw or withhold services reasonably required for the occupation of the premises as a residence with the intent of causing the occupier to give up possession or refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof.

S1(3) and (3A) – Protection from Eviction Act 1977 (as amended by s29(1) and (2) – Housing Act 1988)

3.10 When communicating with tenants you should be accurate, clear, concise and courteous.

3.11 You should dispatch communications, by whatever means are appropriate, so that they reach the intended recipients promptly and in compliance with any legislative requirements. You should be aware of the need to prove to the satisfaction of a court the service of certain documentation.

3.12 You should be available during normal working hours to:

- be contacted by telephone;
- meet tenants; and
- inspect property at reasonable times and intervals.

You should also address the issue of how to deal with incidents/emergencies that occur out of normal hours, and inform landlords and tenants of any arrangements. Out of hours meetings and inspections requested by tenants may be the subject of additional charge by managing agents depending upon the terms of their engagement.

3.13 So far as is reasonably practicable and consistent with statutory and contractual obligations you should keep confidential and not disclose personal information about tenants or landlords to other people without their consent.

Data Protection Act 1998

3.14 You should deal with written applications for permissions and consents expeditiously and, when an application is refused, give reasons, bearing in mind any statutory duty not to withhold consent unreasonably. You and the landlord are under a duty to the tenant to respond in a reasonable time to applications for consent to assign or sublet. Failure to do so is a breach of your statutory duty and may render you and the landlord open to a claim for damages.

S19 – Landlord and Tenant Act 1927

Landlord and Tenant Act 1988

3.15 You should have procedures in place to visit the building at regular intervals having regard to the type and the nature of the occupation and the complexity of the facilities provided. Subject to the terms of any lease or tenancy and where access is needed to an individual flat you should always give tenants as much notice as possible that you require access giving the reasons why, and have due regard to the lease/tenancy and any difficulties in providing access during normal working hours, and the potential costs of out of hours working. In the event that you hold a spare key, entry by that key while the tenant is out should only be with the express consent of the tenant or in the case of a genuine emergency.

Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083). (Amended by the Unfair Terms in Consumer Contracts (Amendment) Regulations 2001 (SI 2001/1186))

S11 (short leases) – Landlord and Tenant Act 1985

In the case of leases granted for a term of less than seven years there is an implied covenant that the tenant will allow access at reasonable times of the day and on 24 hours' notice to view the condition/state of repair.

3.16 Forcible entry

This may be necessary in conjunction with the need to undertake urgent repairs. It may also be necessary in other extreme circumstances. You should have a procedure for this set out and agreed. Forcible entry should only be considered if all other avenues to entry are closed. Witnesses should be sought and police should be notified and immediate arrangements made to repair and re-secure the premises you have entered. A full explanation should be given to the occupier.

3.17 Personal safety

a) You must ensure the safety of your staff and all others involved in management at all times.

b) You should agree a set of procedures to cover this and when staff are out of the office ensure these procedures are followed at all times.

c) In particular you should record the time staff leave the office and monitor their safe return.

d) You should ensure there is a procedure to be followed where staff do not return to the office at the end of their working day confirming they have completed their tasks safely.

e) It is your responsibility to ensure that staff are adequately trained to guard their personal safety.

Health and Safety at Work etc Act 1974

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

3.18 You should levy all charges in accordance with the law and the terms of the lease.

3.19 You should maintain efficient records relating to the building and keep records during the periods of statutory limitation of action. Broadly speaking, court proceedings can be brought up to three years after an incident which injures someone, six years after a breach of contract or of any other obligation which gives another person a legal remedy, and up to twelve years in certain cases involving land. Legal advice may be needed in specific cases about the documents which ought to be retained and the length of time they should be kept, as there are exceptions and qualifications to the time limits set out above.

Limitation Act 1980

3.20 Health and safety policy and risk assessment

You must comply with all applicable health and safety requirements that apply. You should devise and maintain, with specialist help if necessary, a health and safety policy and arrange regular risk assessments.

S2 – Health and Safety at Work etc Act 1974

Part 1 (Smoking) – Health Act 2006

You may need to be registered under the *Data Protection Act* and must comply with data protection law.

Data Protection Act 1998

3.21 You should consult with representative organisations where necessary and must do so when required by law.

Ss 20 and 20ZA – Landlord and Tenant Act 1985

3.22 You should take out and maintain sufficient indemnity insurance cover or equivalent and fidelity insurance cover to protect client money.

3.23 You may advise tenants to seek advice where you think they may have a right to housing benefit and other statutory benefits.

3.24 You should consider where appropriate whether to liaise with social services but not attempt to undertake the powers and duties of public authorities.

3.25 You should take steps to keep yourself informed as to developments in the law affecting residential management to enable you to keep wholly within the law.

3.26 Dispute resolution

a) Where not provided for in the lease/tenancy agreement, you should consider whether to suggest arbitration or mediation by agreement, rather than litigation, as a means of settling particular disputes, and the tenant should be advised to seek legal advice on any such suggestion.

b) You should consider all complaints whether verbal or in writing.

c) On receipt of a complaint in writing, you should investigate and (if appropriate) enforce the conditions of occupancy on other tenants in the building subject to consideration of cost implications, legal requirements and the lease/tenancy agreement.

d) You should have clear policies and procedures for handling tenant disputes and complaints about nuisance between neighbours. You should deal fairly with all parties. You should carefully consider whether there are grounds for civil or criminal action. Also you should have regard to any difficulties that may be created by your intervention, e.g. cost implications, and increased animosity between the parties.

3.27 Antisocial behaviour

You should take reasonable steps to combat antisocial behaviour where it interferes with the peace, comfort and convenience of residents.

3.28 You must not harass tenants as it is a criminal offence.

Protection from Eviction Act 1977 (as amended by s29(1) and (2) – Housing Act 1988)

3.29 Criminality

You should, as far as you are able, ensure that no breach of criminal law occurs in connection with your management. This includes all potentially criminal activities in properties under your control.

3.30 Treatment of income tax

The treatment of income tax should be covered in the agreement with the landlord. All landlords will require sufficient information to manage their tax affairs. When a landlord lives overseas, unless there is a valid exemption certificate from HM Revenue & Customs, the agent must deduct income tax from payment to them. Further information is available from the 'Non-Resident Landlords Scheme', a scheme for taxing the UK rental income of non-resident landlords. Information about this scheme can be obtained from HM Revenue & Customs.

3.31 Money Laundering Regulations

You must comply with the *Money Laundering Regulations*.

Money laundering may be used to conceal serious criminal activities. Any method whereby the proceeds of criminal activities are disguised or converted and then realised as legitimate funds or assets constitutes money laundering. Investing in property as a means of conversion and subsequent resale or mortgaging can release clean funds. Legislation has created three broad criminal offences. These are:

- assisting a criminal to obtain, conceal or retain or invest funds if the person giving assistance knows or suspects the funds to be the proceeds of crime;
- tipping off a person who is the subject of suspicion or is under investigation; and
- failure to report knowledge or suspicion of laundering acquired in the course of a person's trade, profession, business or employment.

The *Money Laundering Regulations* apply to those who undertake relevant financial business. All managing agents must implement procedures in order to minimise the risk of committing a criminal offence.

You should be aware of the RICS guidance on the *Money Laundering Regulations*. This can be found on the RICS guidance page of the RICS website.

Money Laundering Regulations 2007 (SI 2007/2157) (as amended by the Money Laundering (Amendment) Regulations 2007 (SI 2007/3299))

Part 7 – Proceeds of Crime Act 2002

Part 4
Accounting for other people's money

4.1 This Part applies to anyone who holds or receives client money. You should make sure that you have a clear understanding of the meanings of client money and client (see the definitions in Part 1).

4.2 Any money you receive or hold which is not entirely due and payable to you is called client money because it belongs to someone else and as such you should be very careful in handling it and accounting for it.

This is so that if, for example, you were to go bankrupt or to die, there would be no difficulty in identifying client money and the element due to each client, and those clients should have no difficulty in accessing such monies.

You hold client money in trust and if you fail to account for that money properly, you would be open to legal action for breach of that trust, and criminal liability could also arise.

4.3 Remembering that it is not your own money that is involved, you should decide, having regard to the amounts involved and the volume and frequency of activity affecting the account, whether to place client money in an interest bearing account. Unless the client has agreed otherwise in writing, client money should be available immediately to your clients, so a deposit account with a withdrawal notice period may not be suitable. You should discuss with a new client where you will keep the money.

4.4 Special rules apply to service charge funds you collect (see Part 10).

4.5 Bank accounts

You should open one or more client bank accounts which should be:

a) held at a recognised bank, i.e. an institution authorised by the Financial Services and Markets Act 2000; or

b) a deposit account (and not invested in deferred shares) of a building society within the meaning of the *Building Societies Act* 1986;

and in each case the account(s) should be in the name of the manager and have an appropriate description including 'Client Account' in its title.

Ss 42 and 42A – Landlord and Tenant Act 1985

The Service Charges Contributions (Authorised Investments) Order 1988 (SI 1988/1284). (Amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (SI 2001/3649))

4.6 Opening a client bank account

On opening a client bank account you should give written notice to the bank or building society concerned:

a) that all money standing to the credit of that account is client money and that the bank or building society is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of yours;

b) that any interest payable in respect of sums credited to the account should be credited to that account (but see paragraph 5.10); and

c) that you require the bank or building society to acknowledge in writing that it accepts such notice.

4.7 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 and if it is the withdrawal notice period and any restrictions on withdrawals. If not immediately accessible, such restrictions will require the client's approval in writing.

This information may be conveniently given when distributing accounts.

4.8 You should hold your own or your office account separately from client money. You cannot be a client of your practice and, as a result, your personal or office transactions should not be conducted through a client bank account.

4.9 You may pay some of your own money into a client bank account in order to open or maintain it, but you do so at your own risk.

4.10 Records

You should keep account records to differentiate clearly the money which you hold for different clients. You should keep in written form, or on computer (provided that they can be reproduced in written form) all accounts, books, ledgers and records maintained in respect of all client accounts and all bank or building society statements, for at least six years from the date of the last entry therein.

4.11 You should keep properly written up general records:

a) to show all your dealings with client money received, held or paid; and

b) to show all your other dealings through client bank accounts.

4.12 You should keep properly written up records in respect of each client to:

a) show all your dealings with client money received, held or paid on behalf of that client; and

b) enable the current balance of that client account to be shown.

4.13 Your records should be:

a) in a client cash book or in a client column of a cash book, or in a record of sums transferred from the ledger account of one client to that of another;

b) in a client ledger or in a client's column of a ledger;

and may be handwritten, mechanical, computer operated or in other forms of permanent record.

4.14 At least once every 14 weeks you should reconcile your cash books with your client bank account statements and with your client ledger balances and keep a record of your reconciliation. Discrepancies should be investigated and shortfalls on client accounts should be made good.

4.15 You should keep a list of all persons for whom you are or have been holding client money and a list of all bank and building society accounts in which client money is held.

4.16 You should send a written account to your client (or as he directs) for all client money held, paid or received, (whether or not there is any payment due to your client) at appropriate intervals agreed with your client but not less than once a year.

4.17 Receipts

You should pay any client money you receive into a client bank account either on the same working day or the next working day after receipt.

4.18 When you receive a cheque or bankers draft which includes any element of client money, you should pay it into a client bank account before withdrawing any monies which are due to you from that client.

4.19 You should not endorse cheques. You cannot endorse a cheque with the effect of making it payable to anyone other than the named payee if it is crossed and the words 'Account Payee', 'A/C Payee', 'Account Payee only' or 'A/C Payee Only' are written on it.

S1 – Cheques Act 1992

4.20 Payments

You should be cautious about drawing against a cheque before it has been cleared because, if it is not honoured, you will have to make up the shortfall.

4.21 You should never overdraw a client bank account. You should ask your client to supply you with funds before the payment is made or you may make a payment from your own funds, but in so doing you may be at risk if your client fails to pay you. You should never lend one client's funds to another.

4.22 Withdrawals from a client bank account

You may only draw money from a client bank account:

a) if it is your own money paid into a client bank account for the purpose of opening or maintaining the account (see paragraph 4.9 above);

b) for payment to a client;

c) for duly authorised payment on behalf of a client to a third party;

d) for payment of your fees and/or disbursements provided that your client has a copy of your account and your client has authorised payment in writing or it is permitted by your terms of engagement;

e) if it was paid in by mistake; or

f) to transfer it on behalf of a client to another client account.

4.23 Termination of management responsibilities

When you cease to be the manager, you should prepare full accounts up to the final date of management, including schedules of arrears, creditors and debtors. You should pass all documents relating to the management, and any monies held in the client bank account, to your client as soon as possible or as otherwise directed in writing.

4.24 You should keep in written form, or on computer (provided that they can be reproduced in written form) all accounts, books, ledgers and records maintained in respect of all client accounts and all bank or building society statements, for at least six years from the date of the last entry therein.

Part 5
Right to Manage

5.1 The Right to Manage (RTM) is provided by legislation and is a complex provision likely to require specialist professional advice.

Part 2, chapter 1 – Commonhold and Leasehold Reform Act 2002

5.2 RTM is a group right for qualifying tenants of flats to manage their own building in which they live. They do not have to prove fault with the existing landlord or management or pay any premium in exercising the right. They can employ a managing agent of their choice should they wish. They must exercise this group right through a special company set up by the tenants for that purpose called a RTM company.

5.3 You must be aware of tenant's rights in this respect and be aware that they must meet certain qualifying criteria and use prescribed forms to set up a RTM company.

Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 (SI 2003/1988)

RTM Companies (Memorandum and Articles of Association) (England) Regulations (SI 2003/2120)

5.4 Where a RTM company is set up by the tenants in accordance with the legislation and assumes management responsibility from the landlord, any existing contract between the managing agent and the landlord to manage the property would come to an end.

Part 6
Service charges, ground rent and administration charges: information and demands

Service charges

6.1 Subject to the terms of the lease, once a year you should make available on request to tenants a statement of service charge payments that they have individually made. (See also Part 10.)

6.2 Demands for money should be clear and be easily understandable by tenants. They must contain the landlord's name and address and any other information required by statute, and you should avoid the use of codes and abbreviations if possible. Where they are used, they should be explained.

S47 – Landlord and Tenant Act 1987 (as amended by schedule 11, part 2(10) – Commonhold and Leasehold Reform Act 2002)

When sending a demand for service charges it must be accompanied by a summary of tenants' rights and obligations. The particular wording and other requirements for the summary are specified in regulations. Failure to do so will mean that service charges can be withheld until the landlord complies.

S21B – Landlord and Tenant Act 1985

Service Charges (Summary of Rights and Obligations and Transitional Provisions) Regulations 2007 (SI 2007/1257)

6.3 Where arrears are concerned, you should give tenants an explanation as to how any arrears have arisen, if requested. (See also Part 21.)

6.4 You should give tenants reasonable warning of your intention to take action which may deprive them of their homes (forfeiture), and you must comply with any statutory requirements. Any action for forfeiture must be preceded by a determination by a Leasehold Valuation Tribunal (LVT) that a breach of the lease has occurred.

Ss 167–171 – Commonhold and Leasehold Reform Act 2002

Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004 (SI 2004/3086)

Ground rent demands

6.5 Ground rent must be demanded in a particular manner before it becomes payable. You should therefore ensure that any ground rent due is demanded in accordance with the terms of the lease where you are required to do so, and in accordance with the statutory requirements using the prescribed form.

S166 – Commonhold and Leasehold Reform Act 2002

Landlord and Tenant (Notice of Rent) (England) Regulations 2004 (SI 2004/3096)

Administration charge demands

6.6 Demands for administration charges must be accompanied by a notice summarising tenants' rights and obligations before they become payable. The particular wording and other requirements are specified in regulations.

Schedule 11 – Commonhold and Leasehold Reform Act 2002

Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)

Part 7
Services

7.1 The range of services will normally be governed by the terms of the lease unless overridden by statute.

7.2 You should routinely monitor the cost effectiveness of services, aiming always to maintain services and provide value for money.

7.3 You should not act outside the scope of your authority and should not enter into contracts on behalf of landlords or any management company, which bind them for unduly long periods.

7.4 Qualifying works (see also Part 13)

Consultation requirements apply where you propose to carry out works where the relevant contribution (including VAT) of any tenant exceeds £250. You must refer to detailed regulations published under the *Landlord and Tenant Act* 1985 for further information.

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Briefly, a notice of intention as prescribed in regulations needs to be served on each tenant contributing towards the service charges plus the secretary of any Recognised Tenants' Association, and following any observations received or nominations for contractors, you must obtain at least two estimates – at least one of which must be from a firm wholly unconnected with you or the landlord.

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

Following receipt of the estimates you must follow the other procedures set out in the legislation and associated regulations. Failure to comply with the consultation procedures required by the law may mean you will not be able to recover charges beyond the statutory limit of £250 per service charge payer (unless you have obtained a dispensation from the need to consult from a Leasehold Valuation Tribunal (LVT)).

S20ZA – Landlord and Tenant Act 1985 (inserted by s151 – Commonhold and Leasehold Reform Act 2002)

7.5 Qualifying long term agreements (see also Part 13)

Similar provisions and notices apply to works and services contracted for a period of more than 12 months and where the cost to any tenant incurred under the agreement will be more than £100 (including VAT) per annum in any relevant accounting period. You must refer to detailed regulations as published under the *Landlord and Tenant Act* 1985 for further information.

S20 – Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002)

You must serve the relevant notices on each tenant and on the secretary of any Recognised Tenants' Association seeking observations and nominations for contractors where applicable.

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

Failure to comply with the detailed provisions of the law may mean you will not be able to recover charges beyond the £100 per annum statutory limit outlined above per service charge payer (unless you have obtained a dispensation from the need to consult from a LVT).

S20ZA – Landlord and Tenant Act 1985 (inserted by s151 – Commonhold and Leasehold Reform Act 2002)

7.6 If you receive requests for services not contracted to be provided in the lease, or if you wish to terminate any services no longer required, you should obtain a full agreement in writing and should exercise caution and consider an application to a LVT.

7.7 In most cases the common parts of a property will be regarded as a place of work. You must comply with your duties under the *Health and Safety at Work etc. Act* 1974 to ensure the health and safety of your employees and all others who might be affected by your work activities. These include providing a safe place of work, the safe maintenance of plant (including the regular inspection of lifts and boilers by qualified personnel) and safe systems of work.

Health and Safety at Work etc Act 1974

7.8 You must regularly assess the risk to the health and safety of employees and anyone else who may be affected by work activity and appoint competent personnel to enable you to discharge statutory safety obligations. The assessment should identify the preventative and protective measures you need to take to comply with health and safety law. The *Management of Health and Safety at Work Regulations* also include matters such as organising yourself to deal with health and safety, emergency procedures, providing information to employees on health, and cooperation and coordination among employers sharing a work place.

Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

7.9 You must be fully aware of the obligations and strict procedures imposed on you by the *Control of Asbestos at Work Regulations* in so far as they affect the management of residential properties.

Regulation 36(1) – Control of Asbestos at Work Regulations 2006 (SI 2006/2739)

7.10 You should be aware of the terms of part 2 of the *Environmental Protection Act* 1990 in so far as they affect the management of residential properties. You must ensure that all waste in your care is transferred safely.

Part 2 – Environmental Protection Act 1990

7.11 You must be aware of your duties to keep water supplies wholesome, to monitor the quality of water, including the presence of bacteria, in the properties you manage, in particular where the water supply is provided other than by a water provider (for example where pumps are needed to provide water during the construction of a building) and when you have communal tanks.

Private Water Supplies Regulations 1991 (SI 1991/2790)

7.12 You must be aware of your obligations under the *Electricity at Work Regulations* 1989 to maintain electrical equipment to ensure its safety to those using it and provide and maintain a safe system of work in connection with electrical systems. The *Pressure Systems and Safety Regulations* outline the maintenance and inspection regimes you should apply to boilers, etc.

Electricity at Work Regulations 1989 (SI 1989/635)

Pressure Systems and Safety Regulations 2000 (SI 2000/128)

Institute of Electrical Engineers Regulations (17th edition)

7.13 The maintenance of lifts

If you manage property with lifts you should be aware of the numerous regulations and standards. Principal ones are shown in Appendix III.

Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998/2307)

Managers should consult with specialist qualified and experienced lift engineers.

You must ensure that statutory lift inspections take place twice a year by a competent person. Their reports will normally indicate the priority of works required or recommended.

Factories Act 1961

7.14 Unless it is a tenant's or other party's obligation, you should arrange for the regular cleaning of all internal common areas including among other things corridors, staircases, glass in doors and windows accessible from common areas. Cleaning materials must be stored safely. Landings, corridors and staircases should be kept clear and safe.

Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677)

7.15 Unless it is a tenant's obligation, you should keep shared garden areas tended to a reasonable standard consistent with the quality of the property. The gardening service should normally include:

a) grass cutting and lawn maintenance;

b) weeding and pruning;

c) appropriate replacement of shrubs, trees and plants.

Garden waste should be removed or composted on site in a suitable screened compound remote from any dwelling or removed by a suitably licensed contractor.

You should carefully consider the implications of requests by tenants to be allowed to undertake the above roles themselves, subject to the arranging of insurance cover and consideration of safety requirements.

7.16 You must arrange for the regular maintenance and repair of communal space heating and domestic hot water systems. You should have regard to the requirements of insurance inspectors.

Pressure Systems and Safety Regulations 2000 (SI 2000/128)

7.17 Where accommodation is provided, either for staff or ancillary to the provision of other services, any rent that is charged should be reasonable, and in accordance with local market conditions.

7.18 You should be aware of your obligations under the various regulations regarding fire safety.

Health and Safety at Work etc Act 1974

Regulatory Reform (Fire Safety) Order 2005 (SI 2005/1541)

7.19 In respect of soft furnishings in common parts and staff accommodation you must be aware of your obligations under the *Furniture and Furnishings (Fire) (Safety) Regulations* 1988 (as amended) for soft furnishings.

Furniture and Furnishings (Fire) (Safety) Regulations 1988 (SI 1988/1324)

Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1989 (SI 1989/2358)

Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1993 (SI 1993/207)

7.20 Where there is a master electricity meter and electricity is resold to the tenants, the charge should be reasonable and you must have regard to the maximum resale price set by the Gas and Electricity Markets Authority (OFGEM). Where there is a coin-operated telephone, the charges should be reasonable.

Part 8
Budgeting/estimating

8.1 Usually leases provide for the tenants to make advance contributions towards the cost of services during the year through the payment of service charges. These must be no more than is reasonable.

Ss 18 and 19 – Landlord and Tenant Act 1985

8.2 A Leasehold Valuation Tribunal (LVT) may appoint a new manager if it is satisfied that unreasonable service charges have been proposed or are likely to be made, and it considers it just and convenient to do so (see Appendix II).

S24 – Landlord and Tenant Act 1987 (as amended by s85 – Housing Act 1996)

8.3 In most cases both landlords and tenants have the right to apply to a LVT before or after a service charge is incurred for a determination as to the liability to pay a service charge and if so:

S27A – Landlord and Tenant Act 1985 (as inserted by s155 – Commonhold and Leasehold Reform Act 2002)

a) the person by whom it is payable;

b) the person to whom it is payable;

c) the amount which is payable;

d) the date at or by which it is payable; and

e) the manner in which it is payable.

The same rights apply where costs have yet to be incurred for services, etc. whether or not any payment has been made.

A tenant is also not to be taken as to have agreed or admitted any matter by reason only of having made any payment.

8.4 At the end of the year, once the actual costs have been calculated, any 'on account' payments are deducted from each tenant's proportion of the actual costs to arrive at a balancing figure to be paid to the tenant or credited against subsequent charges.

S19(2) – Landlord and Tenant Act 1985

8.5 Some leases do not require advance payments to be made or specify a rate of payment which is out of date and therefore do not allow for recovery of the actual costs adequately. From a landlord's point of view it is not a satisfactory system if all the bills have to be paid by the landlord without sufficient advance contributions from the tenants.

In such a situation the landlord may have to wait over a year to recover the expenditure incurred early in the service charge year and may have to pay for the cost of borrowing money to finance the costs. Sometimes the landlord cannot recover any interest charged on borrowings as part of the service charge.

In such cases, variation of the leases may be advantageous to both parties as, unless funds are available, services may not be provided. This will be

to the disadvantage of tenants. Failure to provide such services may constitute a breach of the landlord's obligations, leading to legal action. If any of the tenants are bad payers, the landlord may wait even longer and risk failure to recover all the money spent. However, tenants have no obligation to agree to variation of their leases.

8.6 This problem of financing the service costs can also cause difficulties where the tenants themselves are responsible for providing services and the charges are payable in arrears. If any of the tenants are late payers, funds to carry out maintenance and repairs may run out before the end of the year. You should consider an application to a LVT for a variation of the lease if the lease deals inadequately with the payment of service charges.

8.7 Budgets should be prepared as carefully as possible, using the best possible information available. Beside the obvious benefits of good and careful management there will be considerable difficulties if there is a deficit at the year-end. It is better to estimate prudently and to include a contingency sum.

Where a contingency sum is included regard should be given to its reasonableness bearing in mind that service charges (including advance payments) can be challenged at a LVT where they are believed to be unreasonable.

8.8 You should draw up or arrange for the preparation of a long-term planned maintenance programme and discuss it with those affected.

You should not fix a budget which is deliberately too low. This will result in cash flow problems for the manager and will create difficulties for the tenants who will face an additional payment at the end of the service charge period.

8.9 You should base budgets on a professional assessment of costs. The items in the budget need not necessarily be supported by quotations or estimates (but see paragraphs 13.17 and 13.18 for statutory consultation requirements) but should be reasonable having regard to the age and condition of the building and plant and the work contemplated. You should not intentionally mislead as to the price at which goods, services, accommodation or facilities are available.

8.10 You should avoid giving low forecasts and, in the case of new developments where warranties replace contracts in the initial period, you should prepare a budget for a full year's costs. Giving misleading indications could be an offence.

8.11 You should consult representative bodies, recognised or informal, about budgets and explain the details to tenants and give them a copy. To allow comparison between years, there should be a standard format for presentation to tenants.

8.12 You should notify tenants of significant departures from the budget and should be willing and able to explain the reasons for them on request.

Part 9
Reserve funds

9.1 Reserve funds are often permitted by the lease. A reserve fund is a pool of money created through the payment of service charges which are not immediately needed towards repairs, maintenance or management, etc. but which are collected and retained to build up sums which can be used to pay for large items of infrequent expenditure (such as the replacement of a lift or the recovering of a roof) and for major items which arise regularly (such as redecoration of the common parts). A reserve fund also helps to spread costs between successive tenants and can, if the leases/tenancy agreements allow, be used, on a temporary basis, to fund the cost of routine services, avoiding the need to borrow money. Legislation ensures that the money in a reserve fund, as is the case with service charge funds and advance payments, is held on trust – see paragraph 10.7.

S42 – Landlord and Tenant Act 1987

9.2 The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy does not make any other provision, is to take the expected cost of future works and divide it by the number of years which may be expected to pass before it is incurred. However, it is advisable to have new estimates of the cost of replacing the item from time to time and to adjust payments into the fund to match costs. If the fund is invested prudently, the interest earned will itself help to meet rising costs. Tax will be charged on the interest income (see also Part 11).

9.3 You should be able to justify the contributions to reserves by reference to the work required, the expected cost and when it is to be carried out. Experience of similar work should be used in support of the calculations. It is not considered appropriate for specifications and tenders to be obtained merely to support the reserve allocation. These will be required at the time the work is to be carried out. It should be indicated to tenants that the figures may vary when the work is undertaken.

9.4 Although some tenants may be able to achieve better returns on money they retain and invest themselves, one of the purposes of reserves is to facilitate the carrying out of expensive non-annual items of work. Unless money is accumulated collectively there is always the likelihood of work not being carried out due to lack of funds. Even if tenants intend to live at a property for a short period they can achieve financial benefit on sale by pointing out to purchasers the existence and extent of the reserve fund.

9.5 You must hold such sums in trust for the purpose of meeting the relevant costs in relation to the property and they should not be distributed to tenants when the lease is assigned/terminated, subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

S42(6) – Landlord and Tenant Act 1987

If after the termination of any lease there are no longer any contributing tenants, any trust fund shall be dissolved and any assets comprised in the fund immediately before dissolution shall, if the payee is the landlord, be retained by him for his own use and benefit, and in any other case, be transferred to the landlord by the payee. Again this is subject to any express terms of the lease relating to distribution, either before or at the termination of the lease.

S42(7) – Landlord and Tenant Act 1987

9.6 Funds held for longer terms, or comprising large balances, should be held in an interest earning account. Funds required to meet day-to-day expenditure should be immediately accessible. Where reserve funds are invested this must be invested in accordance with current regulations.

S42 – Landlord and Tenant Act 1987

Service Charge Contributions (Authorised Investments) Order 1988 (SI 1988/1284) (as amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (SI 2001/3649))

9.7 A trustee is under a duty to invest the trust funds. The investment must be in accordance with the terms of the trust, the *Trustee Investments Act* 1961 or an order made under the *Landlord and Tenant Act* 1987 (which enables funds to be deposited at interest with the Bank of England or with certain institutions under part 4 of the *Financial Services and Markets Act* 2000, including a share or deposit account with a building society, or a European Economic Area firm mentioned in schedule 3 of the Act). Trustees who want to take advantage of the wider powers of investment under the *Trustee Investment Act* 1961 (as amended by the *Trustee Act* 2000) should have regard to the provisions of that Act, and to the various subsequently enacted statutory instruments.

Trustee Investment Act 1961

Trustee Act 2000

S42(5) – Landlord and Tenant Act 1987

You should consider holding the reserve fund in the same account as the service charge fund if the aggregation of the two funds invested will achieve a better return or exemption from bank charges – remembering that the arrangement must be discrete to the property or contributions concerned.

Service Charge Contributions (Authorised Investments) Order 1988 (SI 1988/1284) (as amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (SI 2001/3649)

9.8 If tenants are contributing towards different costs (e.g. one group of tenants contributes towards the lift, whilst another group contributes towards gardening), the funds should be differentiated. This should be done by way of different service charge schedules, each totalling 100%.

9.9 You should not differentiate between different items of expenditure in a reserve fund, e.g. not having separate accounts for lifts and boilers. This is because you may find yourself with insufficient funds for immediate expenditure and overprovision for work not required for the foreseeable future, where contributions are received from tenants contributing towards the same costs.

9.10 You should review contributions annually and base the amount you request from tenants on current up-to-date forecasts including fees and VAT.

9.11 Where funds accumulated are considered to be low, having regard to future commitments, you should indicate this to tenants.

9.12 A reserve fund can have benefits for both landlords and tenants alike. Where the lease allows for a reserve fund to be set up but no such fund exists, you should recommend to your client that a reserve fund be created. Where the lease does not allow for the collection of reserves, consider seeking the agreement of the tenants to a variation of leases, or an application to a Leasehold Valuation Tribunal (LVT) (see Appendix 1).

Part 10
Accounting for service charges

10.1 Often the lease/tenancy agreement will set out the way in which service charges are to be accounted for, the costs that can be recovered and the periods of time for which accounts should be prepared. You should always comply with the provisions of the lease/tenancy agreement (in so far as they do not conflict with statute) otherwise there may be difficulty in recovering the expenditure.

10.2 Your accounts should be transparent and reflect all the expenditure in respect of the accounting period whether paid or accrued. This will enable the arrears and cash flow to be seen more easily.

10.3 You should present accounts so that they indicate clearly all the income in respect of the accounting period whether received or receivable.

10.4 You should arrange for service charge accounts to be audited annually and for copies to be made available to all those contributing to them where the lease requires this. Otherwise, you should consider the benefits and costs of an audit with regard to the tenants and the property concerned (see also Part 12).

10.5 Tenants are only obliged to pay service charges where the tenancy/lease requires this, where reasonably incurred and where the works have been carried out to a reasonable standard.

The law protects tenants against costs unreasonably incurred, unreasonably high charges and services and works that are not of a reasonable standard. A Leasehold Valuation Tribunal (LVT) can be asked to make a determination on whether costs have been reasonably incurred or works have been completed to a reasonable standard.

Ss 19 and 27A – Landlord and Tenant Act 1985 (as inserted by s155(1) – Commonhold and Leasehold Reform Act 2002)

If tenants believe that the charges that they are being asked to pay are unreasonable and they are not satisfied with the manager's explanation then they should seek professional advice or consult either the Citizens Advice Bureau or a local law centre.

Recognised Tenants' Associations have rights to appoint a surveyor (member of RICS) to advise them on service charge matters. The rights, in summary, allow the accountant or surveyor to have reasonable access to inspect the property and documents required to carry out his functions. This includes access to the common parts of relevant premises, including the structure and exterior of the building, and reasonable facilities for taking copies or extracts from documents.

S84 and schedule 4 – Housing Act 1996

10.6 LVTs have the right to appoint a new manager if they are satisfied that unreasonable service charges have been made, and they consider it just and convenient to do so (see Appendix II).

S24 – Landlord and Tenant Act 1987

10.7 Section 42 requires service charges to be held in trust.

For the purpose of section 42, 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to rent:

S42 – Landlord and Tenant Act 1987 (as amended by schedule 10, paragraph 15 and schedule 14 – Commonhold and Leasehold Reform Act 2002)

a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and

b) the whole or part of which varies or may vary according to the relevant costs.

The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

S18 – Landlord and Tenant Act 1985

For this purpose 'costs' include overheads and are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

S27 – Landlord and Tenant Act 1985

It does not include service charges payable under the terms of a tenancy which is regulated by the *Rent Act* 1977, unless the rent is registered as a variable rent on the basis that service charges are payable which vary according to the costs payable from time to time.

10.8 Service charge funds for each property should be identifiable and either be placed in a separate bank account, or in a single client/trust account where the accounting records of the manager separately identify the fund attributable to each property.

10.9 Where interest is earned this belongs to the fund collectively. Interest should not be distributed to the contributing tenants but should be shown as a credit in the service charge accounts and should be retained within the fund and used to defray service charge expenditure.

S42 – Landlord and Tenant Act 1987

10.10 Where statutory trusts apply, the contributions are held:

S42 – Landlord and Tenant Act 1987

a) on trust to meet the relevant costs; and

b) subject to that, on trust for the contributing tenants for the time being in proportion to their respective liability to pay the relevant service charges. (This does not mean, however, that the tenants are entitled to any repayment of the service charge fund. Upon the termination of any tenant's lease, his share of any service charge fund remains part of the service charge fund, and upon the termination of the last lease, the fund passes over to the landlord.)

10.11 The trusts set out in section 42 do not always apply. Where there are express trusts created by a lease before 1 April 1989, the statutory trusts apply only to the extent they are not inconsistent with the express trusts. Also, express or implied trusts created by a lease on or after that date may vary the statutory trusts in certain respects.

S42 – Landlord and Tenant Act 1987

10.12 There are two main aspects to the tax treatment of service charges, namely the tax treatment so far as the landlord is concerned of the service charge payments receivable, and the tax treatment of income earned on service charges received before they are spent on the provision of the relevant services.

10.13 If the statutory trusts apply without any modification, then HM Revenue & Customs have confirmed that, in its view, so long as the trust terms are observed:

a) the receipt of service charge payments subject to the section 42 trusts will not give rise to any tax liability in the hands of the payee;

b) any investment income accrued on the service charge trust fund is subject to tax, but not at the special trust rates that would otherwise apply. Instead this income is taxable at the basic rate applicable to other persons.

Finance Act 2007

Ss 11, 479 and 480 – Income Tax Act 2007

10.14 The purpose of this summary is only to draw attention to the general tax position and it does not refer to all the possible tax charges that can arise in connection with service charge funds. This summary does not apply if there is any modification to the statutory trusts, or if they do not apply to all (e.g. where the service charge payments are governed by express trusts set out in a lease entered into before 1 April 1989). Specialist advice should be taken in all cases.

10.15 A trustee is under a duty to invest the trust funds. The investment must be in accordance with the terms of the trust, the *Trustee Investments Act* 1961 as amended by the *Trustee Act* 2000 or an Order made under the *Landlord and Tenant Act* 1987 (which enables funds to be invested in a deposit account with certain banks or in a share or deposit account with a building society). Trustees who want to take advantage of the wider powers of investment under the *Trustee Investments Act* 1961 should have regard to the provisions of that Act.

Trustee Investment Act 1961 (as amended by the Trustee Act 2000)

S42(5) – Landlord and Tenant Act 1987

Service Charge Contributions (Authorised Investments) Order 1988 (SI 1988/1284) (as amended by the Financial Services and Markets Act 2000 (Consequential and Repeals) Order 2001 (SI 2001/3649))

10.16 A tenant or the secretary of a Recognised Tenants' Association can request that you provide a summary of relevant costs incurred during the last accounting year or, where accounts are not kept on that basis, the 12 months before the tenant's request. You must comply with the request within one month of the request or within six months after the end of the accounting period, whichever is later.

S21 – Landlord and Tenant Act 1985

10.17 The summary provided in response to a request must cover all costs incurred by the landlord for works and services, etc. showing how they are reflected or will be reflected in demands for service charges. The reasonable cost of preparation of the summary and its certification (see paragraph 11.20 below) is properly chargeable to the service charge account.

S21 – Landlord and Tenant Act 1985

10.18 The summary must distinguish between items/costs 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; and for which the landlord has paid within that period.

S21 – Landlord and Tenant Act 1985

10.19 The summary must also include the total of any money received by the landlord for service charges and still standing to the credit of the tenants paying these charges at the end of the period, and any costs which relate to works for which grants have been or will be paid and show how they have been reflected in the service charge demands.

S21 – Landlord and Tenant Act 1985

10.20 If the service charges are payable by the tenants of 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 which have been produced to him.

S21(6) – Landlord and Tenant Act 1985

Qualified accountant means a member of one of the following:

a) the Institute of Chartered Accountants in England and Wales;

S28 – Landlord and Tenant Act 1985

b) the Institute of Chartered Accountants in Scotland;

c) the Association of Certified Accountants; or

d) the Institute of Chartered Accountants in Ireland.

However, certain persons are disqualified from acting as the qualified accountant even though they are a member of the above bodies. See section 28 of the *Landlord and Tenant Act* 1985 for more details.

10.21 You must notify the tenants in writing of costs incurred within 18 months of incurring those costs or the costs will not be recoverable.

S20B – Landlord and Tenant Act 1985

10.22 If within six months of receiving the summary under section 21 (see paragraph 10.16) a tenant or the secretary of a Recognised Tenants' Association makes a request to inspect the accounts, receipts and other supporting documents, you must provide such an opportunity. You must not charge for the inspection and copies or extracts from any documents supporting the summary may be taken. You are not precluded from including a reasonable cost of the inspection in the cost of management.

S22 – Landlord and Tenant Act 1985

10.23 Any charge made for providing copies of any documents or having a member of your staff in attendance must be reasonable.

10.24 You must respond to the tenant's or Recognised Tenants' Association's secretary's request in writing to inspect the accounts, receipts and other supporting documents within one month, and must allow them a period of two months beginning no later than one month after the request is made, to inspect the accounts, receipts and other documents supporting the last accounts or the expenditure in the last twelve months.

S22 – Landlord and Tenant Act 1985

10.25 If you act for an intermediate landlord who does not possess all the relevant information or documents, you must make a written request for them to the superior landlord.

S23 – Landlord and Tenant Act 1985

10.26 The procedure is different depending on whether the tenant or Recognised Tenants' Association asks for a summary of services charges or facilities to inspect supporting documents. Where a request is made for a summary the intermediate landlord must make a written request to his superior landlord who must in turn comply within a reasonable time. Where a request is made for facilities to inspect, the landlord must inform the tenant or Recognised Tenants' Association of the name and address of the superior landlord, to whom they should address the request instead as section 22 would apply to the superior landlord in this case.

Ss 21, 22 and 23 – Landlord and Tenant Act 1985

10.27 If you fail to comply with the requirements in sections 21, 22 and 23 of the *Landlord and Tenant Act* 1985 (see above) without reasonable excuse you will be committing a summary offence and will be liable on conviction to a fine not exceeding level 4 on the standard scale (£2,500).

S25 – Landlord and Tenant Act 1985

S37 – Criminal Justice Act 1982

10.28 When a tenant has paid service charges in advance the amount payable must be reasonable and you must repay any excess paid, or deduct it from subsequent charges, as the lease directs once the costs have been incurred. Advance payments and actual expenditure should be presented clearly.

S19(2) – Landlord and Tenant Act 1985

Part 11
Audit of service charge accounts

S28 – Landlord and Tenant Act 1985

11.1 Unless the costs of an audit cannot be recovered, service charge accounts should be audited by a suitably qualified accountant who complies with the requirements laid down in section 28 of the *Landlord and Tenant Act* 1985. This provides protection for tenants both when the property is managed by a managing agent or the landlord, or by a group of tenants acting formally or informally.

11.2 Where an audit is to be carried out you should ensure that this is in accordance with auditing standards, practice notes and bulletins issued by the Auditing Practices Board (APB) and Auditing Guidelines, in force and adopted by the APB.

11.3 You should be prepared to answer auditor's questions relative to items of expenditure and variations between estimated and actual expenditure.

Companies Act 1985 (as amended)

11.4 Where you act for a limited liability management company you should advise the officers of the company to ensure that company accounts are audited where required and that annual returns are made to the Registrar of Companies and that AGMs are called.

Auditor's specific responsibility

11.5 Auditors should question managers over significant items of expenditure as well as variations between estimated and actual expenditure. You should be prepared to make a statement about the basis and allocations against which auditors can form their opinion.

Part 12
Contractors

12.1 Normally the landlord or management company should be the employer under any contract, not the managing agent.

12.2 All persons, including managing agents and landlords, should only undertake property related repairs where they are competent to do so.

12.3 You should deal with contractors on behalf of landlords with attention to questions of economy, efficiency, quality of service, speed and in accordance with instructions from the landlord and having regard to health and safety. Where a contractor is engaged with whom you have a financial or other connection you should declare this to the landlord and the tenants, bearing in mind the consultation requirements in parts 13.17 and 13.18.

12.4 You should select contractors suitable to provide the service involved to a reasonable minimum standard having due regard to the size and nature of the contract, and comply where appropriate with the *Construction (Design and Management) Regulations* 2007. Contractors should, where possible, be members of a relevant trade organisation, which has published a code of practice for the assessment of its members. You should also have regard to the statutory requirements to consult on long term agreements or qualifying works where costs to any service charge payer exceeds specific amounts. See paragraphs 7.4 and 7.5 and 13.17 and 13.18. See also paragraphs 13.19 to 13.21.

Construction (Design and Management) Regulations 2007 (SI 2007/320)

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

12.5 When you engage contractors for major work you should define their duties. You should take all reasonable steps to ensure that contractors carry out their duties promptly and to a reasonable minimum standard, e.g. by use of competitive tender, written contracts with detailed provisions, arrangements for staged payments and liquidated damages.

You should have in place a procedure for instructing contractors, indicating to them where appropriate the expected response time. You should inform the tenants that the contractor has been instructed to deal with the repairs, and should keep them informed of progress.

12.6 You must require that all contractors comply with the health and safety legislation and Health and Safety Executive Guidance Notes. You should take appropriate care as to the security of and the avoidance of damage to tenants' possessions and the avoidance of unreasonable disturbance while undertaking the works. There should be a procedure to deal with complaints by tenants alleging unsatisfactory work or damage.

Ss 27 and 28 – Housing Act 1988 (as amended by schedule 2, paragraph 79(1) – Planning (Consequential Provisions) Act 1990)

Harassment of tenants is strictly forbidden and if proven can result in a fine and/or imprisonment.

Protection from Harassment Act 1997

12.7 You should verify that all contractors maintain appropriate and current public liability insurance.

12.8 The subject of the Construction Industry Scheme and the requirement to deduct tax when making payments is important for managing agents and landlords. The Construction Industry Scheme is complicated and there are penalties for those who fail to comply with it – especially in relation to the verification of registration cards, tax certificates and tax vouchers. If you are in any doubt about your responsibilities under the scheme you should seek professional advice.

12.9 You should ensure that you have sufficient funds prior to instructing a contractor, or that the method of payment has been agreed prior to works commencing between all parties.

12.10 Contractors should issue appropriately detailed invoices for all works carried out, however minor, which state clearly what the charges are for.

Part 13
Repairs

13.1 The responsibilities of the parties with regard to repairs should be set out in the lease(s)/tenancy agreement(s).

If the terms of long leases are inadequate, variations can be sought (see Appendix I).

13.2 The landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises they own, a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect. A manager acting on behalf of the landlord also has this duty of care. This can include for example, taking reasonable care to repair paths, driveways and car parking areas so that they are reasonably safe to use, and clearing gutters, down pipes and gullies when necessary.

S4 – Defective Premises Act 1972

13.3 You should ensure that all reasonable and appropriate insurances for common parts are in place and reviewed and renewed annually. See also Part 15 of this Code.

13.4 You should notify tenants how and to whom repairs should be reported and you should have an established procedure for dealing with urgent repair work, particularly out-of-office hours. On-site staff should be aware of the extent of their authority to order urgent repair work.

13.5 You should deal promptly with tenant's reports of disrepair, the remedy of which is the landlord's responsibility, in a manner appropriate to their urgency.

13.6 Where the landlord is responsible under the terms of the lease/tenancy agreement or by statute for repairs, the lease/tenancy agreement may stipulate the procedure for you to inspect the property and to view its condition. If this is stated in the agreement, then it must be complied with. If access is required to resident's homes then reasonable notice should be given in accordance with the lease/tenancy agreement unless in cases of emergencies. If not, you should inspect the condition and state of repair of the property at reasonable times of the day, provided that reasonable notice in writing (at least 24 hours) has been given to the tenant.

S148 (protected tenancies) – Rent Act 1977

S11 (short leases) – Landlord and Tenant Act 1985

S16 (assured tenancies) – Housing Act 1988

13.7 You should, however, give tenants as much notice as possible that you require access and have due regard to their valid difficulties in providing access during normal working hours.

13.8 The lease/tenancy agreement should contain provision for entry in emergencies. You should endeavour to identify and maintain a record of emergency access details. You should only gain entry with the express consent of the tenant or in the case of a genuine emergency you should only consider forcing entry if the tenant is unavailable or does not answer and if it is an emergency event such as a fire, gas escape, electrical dangers, or escape of water from the property which affects other property. You are advised to try to obtain alternative access arrangements for emergencies and warn that if this information is not forthcoming or updated, emergencies could involve forced entry and expenses including your own costs, which could be charged to the tenant. In the absence of the emergency services, you should consider seeking an independent witness to a forced entry, inform the police and maintain appropriate records.

13.9 You should arrange for repairs to be undertaken to completion in a reasonable time and, if necessary, to a pre-agreed programme. Works you arrange should be carried out so as not to cause undue inconvenience. You should consult tenants before a programme of works is commenced unless urgency or the lease/tenancy agreement dictates otherwise.

13.10 Works you arrange should be carried out to a reasonable minimum standard so that, unless they are of a temporary nature, they do not need to be repeated within a short period relative to their nature and reasonable expectations of them. Repair work should be cost effective taking into account its durability and expense. In the long term it may prove more cost effective to replace than to continue to repair. In certain circumstances work which is considered not to be of a reasonable standard can be the subject of court action on the basis of a breach of contract.

13.11 Where the lease does not stipulate a maintenance regime, you should discuss with your clients, and propose to tenants, a programme of cyclical maintenance for parts of the buildings, including plant and services, which require regular maintenance. The programme should reflect a realistic cost of maintenance, including periodic redecoration work. A budget for the cost of maintenance should be included in each year's service charge to ensure an adequate fund to meet the cost where permitted in the lease. You should be aware of the adverse cost implications for older buildings.

13.12 You should consider the use of experienced or qualified building consultants/specialists, having regard to the size and complexity of the project. Their use should also be considered for the carrying out of periodical inspections to identify defects. The building specialist should also inspect reported defects before work is done if it is likely to be complicated, costly or if it was poorly defined when reported.

13.13 When arranging new construction works you should be aware that tenants are entitled to the quiet enjoyment of their homes, and you should seek to minimise disruption.

13.14 You should consult tenants on the details and programme for carrying out such works. Reasonable allowance should be made in the programme for tenants' absence, for example when they are away from the property when the works are being undertaken and access is required.

13.15 Health and safety

There are extensive health and safety codes and regulations that affect the management of residential property. It is important that you take steps to identify the ones that are applicable. Appendix 3 indicates some which may be relevant, but the list is not exhaustive. These regulations exist to ensure that, among other things: all places of work are maintained in a safe and healthy condition; all entrances and exits are safe, without risks and unobstructed at all times; all plant and equipment is maintained in a safe and healthy condition; all employees are provided (where appropriate) with protective clothing and/or equipment and given proper instruction on their use; all appropriate signage and safety notices are properly displayed; all necessary instruction, training and supervision of employees is provided to ensure health and safety; competent people are appointed to assist in health and safety matters; and fire regulations are complied with.

Managers should satisfy themselves that all buildings under their management meet the relevant standards under the health and safety regulations. Where they do not, property managers should ensure that corrective action is taken or that problems are brought to the owner's attention.

Occupying tenants should be aware of their responsibilities under the lease/tenancy. Employees and subcontractors of the managing agent should have been properly advised and provided with appropriate training. Managing agents should have office procedures in place to ensure that health and safety matters are referred to in any paperwork involving the employment of contractors.

13.16 Consultation on long term agreements and qualifying works

In certain circumstances you must consult tenants who pay service charges if you are proposing to enter into any long term agreements or carry out works above prescribed amounts.

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

13.17 Qualifying works (see also Part 7)

Consultation requirements apply where the landlord or manager on the landlord's behalf proposes to carry out works where the relevant contribution (including VAT) of any tenant exceeds £250. You must refer to the detailed regulations for further information.

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

A notice of intention as prescribed in regulations needs to be served on each tenant contributing towards the service charges plus the secretary of any Recognised Tenants' Association. Having taken account of any observations and nominations for contractors, you must obtain at least two estimates – one of which must be from a firm wholly unconnected with you or the landlord.

Following receipt of the estimates you must follow the statutory requirements. Failure to meet those requirements may result in you being unable to recover charges beyond the statutory limit of £250 per service charge payer (unless you have obtained a dispensation from a Leasehold Valuation Tribunal (LVT)).

Ss 20 and 20ZA – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

13.18 Qualifying long term agreements (see also Part 7)

Similar provisions and notices apply to works and services contracted for a period of more than 12 months and where the cost to any tenant will be more than £100 (including VAT) per annum in any relevant accounting period. You must refer to the detailed regulations for further information.

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

You must serve notices on each tenant contributing to the costs and on the secretary of any Recognised Tenants' Association.

Failure to comply with the detailed statutory requirements may result in you being unable to recover charges beyond the statutory limit outlined above (£100) per service charge payer (unless you have obtained a dispensation from the need to consult from a LVT).

Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

Ss 20 and 20ZA – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

13.19 In most cases both landlords and tenants have the right to apply to a LVT before or after a service charge is incurred, for a determination as to the liability to pay a service charge and if so as to:

S27A – Landlord and Tenant Act 1985 (inserted by s151 – Commonhold and Leasehold Reform Act 2002)

a) the person by whom it is payable;

b) the person to whom it is payable;

c) the amount which is payable;

d) the date at or by which it is payable; and

e) the manner in which it is payable.

The same rights apply where costs have yet to be incurred for services, etc. whether or not any payment has been made.

A tenant is also not to be taken as to have agreed or admitted any matter by reason only of having made any payment.

13.20 Recognised Tenants' Associations have rights to appoint qualified surveyors who are members of RICS to advise them on service charge matters. Such surveyors have rights to reasonable access, with notice, to inspect documents and the common parts of relevant premises, including the structure and exterior of the building. Reasonable facilities for taking copies or extracts from documents have to be provided.

S84 and schedule 4 – Housing Act 1996

Two or more qualifying tenants of the same landlord are entitled to have a management audit carried out on their behalf, as is a single qualifying tenant where there is no other dwelling in the premises. This will enable an investigation for the purpose of ascertaining whether the management functions and expenditure of service charges are being discharged in an efficient and effective manner.

S76 – Leasehold Reform, Housing and Urban Development Act 1993

13.21 Leasehold Valuation Tribunal (LVT)

The role of a LVT has been considerably widened. LVTs now have jurisdiction in respect of:

- section 20 consultation procedures and applications to dispense with these procedures. See paragraphs 7.4 and 7.5 and 13.17 and 13.18;
- service charge recovery in terms of the liability to pay and reasonableness;
- administration charge recovery in terms of the liability to pay and reasonableness;
- variation of leases;
- appointment of managers;
- Right to Manage (RTM) – disputes over eligibility, costs in dealing with a notice for RTM, uncommitted service charges and other related issues.

Further guidance on LVT jurisdiction is available from the website www.rpts.gov.uk

Part 14
Works to extend or develop an existing block or new phase

14.1 When arranging new construction works you should have regard to any requirements under the terms of the leases, be aware that tenants are entitled to the quiet enjoyment of their homes, and should seek to minimise disruption.

14.2 You should consult tenants on the details of and programme for carrying out such works and reasonable allowance should be made in the programme if possible for tenants' absence, for example when they are away from the property, when the works are being undertaken and access is required.

14.3 Following an increase in occupied floor area, you should discuss with your client/landlord reapportionment of tenants' responsibilities for making financial or other contributions. You should be aware, and make your client aware, that alterations in obligations or rights under existing leases can only be made with the consent of the tenants or, in certain circumstances, by order of a Leasehold Valuation Tribunal (LVT), or by a court.

Part 15
Insurance

15.1 Significant restrictions are now placed on managing agents acting in various insurance matters. These restrictions are administered by the Financial Services Authority and regulations allow varying levels of involvement subject to strict procedures being adhered to.

All parties should be aware of the risks to the interests of both landlords and tenants if sufficient insurance does not exist. This applies across the whole of Part 15.

15.2 General Insurance Regulations

The Financial Services Authority is an independent body set up by government to regulate financial services in the UK.

You should be aware that if your business helps its customers to buy insurance products or claim from them (even if that is not your main business or you do it in a small way) you will be affected by general insurance regulations issued by the FSA under the *Financial Services and Markets Act* 2000. Further information about the regulations can be obtained from the Financial Services Authority.

Before carrying out any insurance related work you must ensure that you are authorised to do so.

You will be acting illegally and could be fined or imprisoned if you continue to help your customers with insurance products without either getting permission from the FSA, or arrange to be exempt, for example by being regulated through the RICS Designated Professional Body scheme. This scheme means that RICS is able to grant a licence to firms and regulate them for the purpose of general insurance activities.

15.3 Usually the obligations of the parties will be set out in the lease. You should make both landlord and tenant aware of their responsibilities and the desirability of insurance.

15.4 Where the obligations are not set out in the lease, a manager should draw the landlord's attention to the risks for which the property and its facilities are insured.

15.5 You should have available sufficient detail of the building insurance to enable a claim to be made if necessary.

15.6 When a claim arises and you are authorised to undertake this work you should process it promptly. A charge may be made for this depending upon your terms of engagement. You should not judge the merits of a claim but you may consider it necessary for both the landlord and the tenant to sign the claim form. Where you are not authorised to undertake this work the matter should be referred to the broker to deal with through either the Financial Services Authority or the Designated Professional Body.

15.7 You should keep the tenant informed on the progress of a claim or provide him with sufficient details to enable him to pursue the matter himself if he is dissatisfied.

15.8 Claims settlements are normally payable to the insured but should be treated as belonging to the persons suffering damage. You should not therefore deduct (unless otherwise agreed) arrears or other payments due when passing them on to the claimant.

15.9 You are recommended to obtain a mandate allowing you or the claimant to receive insurance claims payments, as these are often made payable to the insured who may not be the beneficiary of the claim.

15.10 Where a tenant pays a service charge which consists of or includes an amount payable directly or indirectly for insurance, the tenant or secretary of a Recognised Tenants' Association can ask you in writing for a written summary of the current insurance cover, which must be provided within 21 days beginning with the day on which the notice is received. The summary must set out the name of the insurer, the risks covered in the policy and the sum for which the property is insured. Alternatively, you can provide a copy of every relevant policy. Failure to comply with these requirements, without reasonable excuse, is a criminal (summary) offence subject to a fine, on conviction, not exceeding level 4 (£2,500) on the standard scale.

S30A – Landlord and Tenant Act 1985 (as inserted by s43(1) – Landlord and Tenant Act 1987 and modified by paragraph 5 of schedule 7 – Commonhold and Leasehold Reform Act 2002)

Schedule 1 – Landlord and Tenant Act 1985 (substituted by schedule 10 – Commonhold and Leasehold Reform Act 2002)

The tenant or secretary of a Recognised Tenants' Association can also ask to inspect the insurance policy, together with supporting documents giving evidence of payment of premiums due in the current period and that immediately preceding it. The tenant or secretary of a Recognised Tenants' Association can take copies, or can require that copies or extracts from a policy are either sent to him or arrangements made to collect them. Compliance is required within 21 days from the day on which the notice is received, and if served on you as the agent, you should forward it as soon as possible to the landlord.

15.11 Facilities for the inspection of insurance documents must be made available free of charge. However, a reasonable amount may be charged as part of the costs of management. A reasonable charge may also be made for doing anything else in compliance with a requirement imposed by a notice served under the legislation. Failure to comply, without reasonable excuse, is a criminal (summary) offence subject to a fine, on conviction, not exceeding level 4 (£2,500) on the standard scale.

S30A – Landlord and Tenant Act 1985 (as inserted by s43(1) – Landlord and Tenant Act 1987 and modified by paragraph 5 of schedule 7 – Commonhold and Leasehold Reform Act 2002)

Schedule 1 – Landlord and Tenant Act 1985 (substituted by schedule 10 – Commonhold and Leasehold Reform Act 2002)

15.12 You should also consider insuring for the provision of alternative accommodation, if necessary over and above that provided for in a standard household policy, and where appropriate for the employers' liability, legal fees, fidelity, engineering, public liability and communal contents so as to protect the parties as far as reasonably possible from unexpected liabilities. In particular, serious consideration should be given to the taking out of terrorism insurance. Directors' and officers' insurance, where applicable, should be included.

15.13 When so instructed, you should arrange the various insurances in accordance with the landlord's instructions in compliance with the lease. You should regularly review the extent of cover and the level of premiums.

15.14 You should notify insurers of claims at the earliest opportunity. You should be aware that tenants have a right to notify insurers of possible claims.

Schedule 1, paragraph 7 – Landlord and Tenant Act 1985 (inserted by section 43(2) –Landlord and Tenant Act 1987)

15.15 When a claim has to be made for an insured risk on a buildings policy, it is common for the claim to be the subject of excess imposed by the insurance company. This should be considered part of the cost of insurance, otherwise it would be impossible to insure certain buildings without excess or alternatively the premium would be extraordinarily high and uneconomic. In these circumstances you should consider whether the terms of the lease/tenancy agreement contain a provision that where an insurance claim is as a result of a negligent act by the tenant, you are entitled to recover the excess from the tenant.

15.16 Valuations for insurance purposes

You should consider this on a regular basis and instruct for such valuations to be carried out when necessary, usually conveniently before the annual renewal. Valuations must be carried out by qualified valuers with appropriate skill and experience in the types of properties being assessed, with their fees normally being regarded as a service charge item where allowed.

15.17 Where individual tenants within a block are responsible for insuring the dwelling and a landlord has the right to nominate or approve the insurers, tenants can apply to a Leasehold Valuation Tribunal (LVT) to determine whether the insurance from the nominated insurer is unsatisfactory, or the premiums payable are excessive.

15.18 An employer must display a copy of his current 'certificate of employer's liability insurance' at each place of business at which he employs staff who may be covered by the insurance. Employers may satisfy this requirement by displaying the employer's liability certificate in electronic format providing that it is accessible by all employees.

S4 – Employers' Liability (Compulsory Insurance) Act 1969

Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573)

Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008 (SI 2008/1765)

15.19 You should, in selecting the insurance company, have regard to your experience of that company's handling of claims and general terms as well as the premium being charged.

15.20 Where insured reinstatement/damage is charged to the service charge account, the related monies received as a result of an insurance claim should be credited to that account.

Part 16
Provision of information

16.1 Many other sections within this Code refer to legislation which requires specific information to be given to tenants. In certain circumstances the following information must be provided. This is not an exhaustive list.

16.2 Landlord's name and address

You must provide the tenant with an address in England and Wales for the service of notices. This could be the landlord's own address. Until such information is provided any rent, service charge or administration charge is deemed not to be lawfully due from the tenant. Where a written demand is issued to a tenant, it must contain the landlord's name and address and if that address is *not* in England and Wales an address in England and Wales at which the tenant may serve notices of proceedings on the landlord.

Ss 47 and 48 – Landlord and Tenant Act 1987

S166 – Commonhold and Leasehold Reform Act 2002

16.3 You should at the commencement of the lease/tenancy, and must within 21 days of a written request, give the tenant the name and address of the landlord. If the landlord is a company and the tenant makes a further request, after receiving the name and address of the landlord, then you must also give the name and address of the directors and secretary of the company within 21 days of that further request. Failure without reasonable excuse to comply with these requests is a summary offence liable to a fine on conviction not exceeding level 4 on the standard scale (£2,500).

Ss 1 and 2 – Landlord and Tenant Act 1985

16.4 A tenant may also request the name and address of every person who owns a freehold interest in the property, including any superior leasehold interest in the property. You must provide the information within 28 days.

S11 – Leasehold Reform, Housing and Urban Development Act 1993

16.5 Management policy

You should manage the property on as open and transparent a basis as is practicable, subject to maintaining confidentiality in respect of personal information. You should explain to the tenant your relationship with the landlord. Any interest, financial or otherwise, you may have in any companies employed to provide services should be provided, following written request or declared voluntarily.

16.6 Landlord's change of address

Landlords should inform the manager or, in the event of there being no managing agent, the tenant, of any change of address, especially if they are going abroad. Managing agents must be aware of the provision of the *Finance Acts* 1995 and 2007 especially with regard to the requirements to deduct tax from rent received.

Finance Acts 1995 and 2007

16.7 New landlord

A landlord who has just acquired the property must give notice in writing of the purchase and of his name and address to the tenants not later than the next day on which rent or service charge is payable under the lease/tenancy, or if that is within two months after the assignment not later than the end of that period of two months. Where the tenant has 'rights of first refusal' (see Appendix II) additional information must be given: that the tenant had such rights, that the tenant may (with other qualifying tenants) have rights to information about the disposal and to acquire the landlord's interest, and must give the time limit for exercise of these rights.

S3 – Landlord and Tenant Act 1985

S3A – Landlord and Tenant Act 1985

16.8 The new landlord will be committing a criminal (summary) offence if he fails to give this information without reasonable excuse. A local housing authority has the power to bring proceedings. The 'old' landlord as well as the new one is liable for any breaches of the landlord's covenants, etc. until the tenants have been notified of the identity of the new landlord (by either the former or current landlord).

S34 – Landlord and Tenant Act 1985

S3 – Landlord and Tenant Act 1985

S3A – Landlord and Tenant Act 1985

16.9 Change of occupier or correspondence address

Tenants should tell the manager in writing about any change of occupier and any change in their own address. This is for security reasons, and because they are entitled to receive certain information, e.g. ground rent. It is also in the interest of good estate management. Tenants also have ongoing responsibilities under the terms of their leases. It may also be helpful for tenants to tell the manager if they are going to be absent for more than four weeks, although there is no statutory or other requirement for them to do so.

16.10 Change of managers/managing agents

Likewise, managers should tell tenants in writing about any change of address or where they no longer manage the property.

16.11 Demands for service or administration charges, or ground rent

Information relating to tenants' rights and obligations must be sent with any demand for service or administration charges. If this is not sent payment can be withheld. The particular wording and other requirements to be used for each summary are specified in regulations. Likewise, ground rent does not become payable until it has been demanded using the particular form of notice specified in regulations.

S21B – Landlord and Tenant Act 1985

Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257)

Schedule 11 – Commonhold and Leasehold Reform Act 2002

Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)

S166 – Commonhold and Leasehold Reform Act 2002

Landlord and Tenant (Notice of Rent) (England) Regulations 2004 (SI 2004/3096)

16.12 Sales of individual dwellings

Information which will be of interest to prospective purchasers of individual leasehold homes is often held by the landlord or managing agent (manager), and where documentary information has not been retained by the tenant the landlord or manager may be the only reasonable source of such information.

There are statutory rights for tenants to obtain certain information (explained in other parts of this Code), including insurance and service charge information. However, provision by the landlord or manager of information or documents sought in respect of the sale of a dwelling is regarded as good practice and helpful to all parties. Such requests are likely to be as a result of the need for a seller to compile a Home Information Pack (HIP), or in respect of pre-contract enquiries.

HIPs

Legislation requires a HIP to be prepared and made available to prospective purchasers for all residential properties marketed for sale. From 1 January 2009 it became mandatory to include an official copy of the lease in the HIP for a leasehold property. In addition, from 6 April 2009 it became mandatory to include the Property Information Questionnaire (PIQ) in the HIP. Sellers can continue to include additional leasehold documents within the HIP if they wish to do so but there is no statutory requirement.

Whilst the seller should be in a position to complete the leasehold summary within the PIQ and either possess a copy of the lease or be able to obtain an official copy from the Land Registry, requests for information may still be received in respect of the compilation of the HIP prior to marketing of a home for sale. Such requests would normally be made by or on behalf of a seller.

As the person responsible for managing the property you should supply any relevant information required for the HIP if requested to do so and in your possession.

When supplying information and documents, either for the HIP or just generally, you should make it clear to tenants that should they wish to sell the property in the future it would be useful to retain the documents.

Pre-contract enquiries

Information can also be requested in respect of pre-contract enquiries, which would normally occur at a later point during the sale process. Pre-contract enquiries would most commonly be made by or on behalf of the purchaser, through the seller or their representative.

You should supply prospective sellers, or their representatives, with information about the premises that you manage to satisfy the pre-contract enquiries and any other reasonable enquiries they may have. The information sought may vary, but in most cases is likely to be of a 'standard' nature and could include information about:

Housing Act 2004

Home Information Pack (No 2) Regulations 2007 (SI 2007/1667)

Housing Act 2004 (Commencement No 8) (England and Wales) Order 2007 (SI 2007/1668)

Housing Act 2004 (Commencement No 9) (England and Wales) Order 2007 (SI 2007/2471)

Home Information Pack (Amendment) Regulations 2007 (SI 2007/3301)

Housing Act 2004 (Commencement No 10) (England and Wales) Order 2007 (SI 2007/3308)

Home Information Pack (Amendment) Regulations 2008 (SI 2008/572)

Housing Act 2004 (Commencement No 11) (England and Wales) Order 2008 (SI 2008/898)

Home Information Pack (Amendment) (No 2) Regulations 2008 (SI 2008/1266)

Home Information Pack (Amendment) (No 3) Regulations 2008 (SI 2008/3107)

- the landlord;
- ownership of the block (e.g. has the right to enfranchise been exercised);
- management (including any Memorandum and Articles);
- other formal/informal arrangements affecting the property;
- Residents' Associations;
- ground rent;
- service charges, sinking funds, major works (existing and future plans) and other maintenance related agreements;
- insurance;
- disputes (including recent Leasehold Valuation Tribunal (LVT) or court cases);
- complaints;
- notices/consents/ risk assessments; and
- other general information (e.g. number of flats).

General
Where information and/or copies of documents are requested you should provide it within reasonable timescales.

Any charge that can be made should be reasonable, and you should be aware that you may be liable to your client, sellers and purchasers, for the accuracy of the information you supply.

You should publish a list of proposed charges where possible (as referred to in Part 2 of the Code), and indicate what the timescales are likely to be (It is recommended that a response to an enquiry should be sent no more than ten working days from receipt of the request. This information should be made available on request, and be available online where possible.

Part 17
Residents'/Tenants' Associations

17.1 Tenants may get together to form a Recognised Tenants' Association, which is a type of association that has established statutory rights. The creation of an association can bring advantages to the management in general, and in particular can ease communication with the tenants to establish what they want and to appreciate the differing points of view. It is desirable to establish how representative the association is and to seek a copy of its constitution at regular intervals, as well as its membership list. You should be informed when officers of the association change.

S29 – Landlord and Tenant Act 1985

17.2 A tenants association can be recognised by a written notice from the landlord, or alternatively by application to a Rent Assessment Committee which may grant a certificate of recognition. A notice withdrawing recognition of a Recognised Tenants' Association can be given by the landlord, to take effect no earlier than six months after the notice is given, but only where the landlord has given written recognition. A certificate given by the Rent Assessment Committee can only be cancelled by a member of the Rent Assessment Committee panel.

S29 – Landlord and Tenant Act 1985

17.3 Where a Recognised Tenants' Association has no secretary, the manager should arrange with the chairman or other responsible officer to nominate a substitute officer to receive notices on behalf of the Association.

17.4 The landlord must provide to a Recognised Tenants' Association on written request details relating to the appointment, employment or proposed employment of a managing agent and allow a reasonable period for them to comment, including on the managing agent's duties and performance. The landlord must state which of their obligations it is proposed that the agent should discharge, and must allow a period of at least one month for comments to be sent to a person named by the landlord at an address in the UK. The landlord shall have regard to observations made by the association.

S30B – Landlord and Tenant Act 1985

The landlord must provide the details and invite comment every five years thereafter and whenever the landlord appoints a new managing agent, if a notice has previously been served by a Recognised Tenants' Association.

17.5 If requested, you must send a summary of service charges to the secretary of the Recognised Tenants' Association, and provide an opportunity for the secretary of a Recognised Tenants' Association to inspect the accounts, receipts and other documents supporting the service charge. You must not charge the secretary for inspection, although the cost of the inspection can be included in the cost of management. You must allow copies or extracts to be taken from any document, although for this service you can levy a reasonable charge.

Ss 21 and 22 – Landlord and Tenant Act 1985

17.6 Recognised Tenants' Associations have rights to appoint qualified surveyors who are members of RICS to advise on service charges. The surveyor has the right to request reasonable access to inspect documents and also to the common parts of relevant premises, including the structure and exterior of the building. Reasonable facilities for taking copies or extracts from documents must be given.

S84 and schedule 4 – Housing Act 1996

Two or more qualifying tenants of the same landlord are entitled to have a management audit carried out on their behalf, as is a single qualifying tenant where there is no other dwelling in the premises. This will enable an investigation for the purpose of ascertaining whether the management functions and expenditure of service charges are being discharged in an efficient and effective manner.

S76 – Leasehold Reform, Housing and Urban Development Act 1993

17.7 Insurance

If requested, within a period of 21 days the landlord must provide the secretary of a Recognised Tenants' Association with a written summary of the insurance cover. If requested, the original policy or associated documents must also be made available for inspection and reasonable facilities afforded for taking copies or extracts. If requested, copies or extracts must be taken and either sent to the secretary, or facilities allowed for collecting them. Failure to comply without reasonable excuse is a summary offence, subject on conviction to a fine not exceeding level 4 on the standard scale (£2,500). If a superior landlord insures, a written application must be made to him for insurance details.

Schedule – Landlord and Tenant Act 1985 (as amended by schedule 10 (8 and 9) – Commonhold and Leasehold Reform Act 2002)

17.8 Recognised Tenants' Associations have rights to nominate contractors for major works and long term agreements.

S20 – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations (SI 2003/1987)

Part 18
Consultation

18.1 It is better to keep in touch with tenants than to remain silent and the legislative requirements to consult where qualifying works and long term agreements are concerned (see Parts 7 and 13) should be regarded as the minimum standard required, not the optimum.

18.2 You should be aware that by law, you must consult tenants about works which are to be carried out at a cost above the statutory limits. Parts 7 and 13 provide further information on this.

Ss 20 and 20ZA – Landlord and Tenant Act 1985 (as amended by s151 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Consultation Requirements) (England) Regulations (SI 2003/1987)

18.3 Where there is no Recognised Tenants' Association acting for the tenants you should consult tenants individually and, if appropriate, hold meetings. When a meeting is convened, the manager should give reasonable notice of it to all tenants including the place, date and time of the meeting and the matters to be considered.

18.4 Managing agent

A Recognised Tenants' Association has the right to serve notice on the landlord asking him to consult with the association about the appointment or employment of a managing agent.

S30B – Landlord and Tenant Act 1985

18.5 When such a notice has been served and it is proposed to appoint or reappoint a managing agent, the landlord must serve a notice on the association stating the name of the proposed managing agent, and which of the landlord's obligations it is proposed that the agent should discharge. The landlord must allow a period of at least one month for comments to be sent to a person named by the landlord at an address in the UK. The landlord shall have regard to observations made by the association.

S30B – Landlord and Tenant Act 1985

18.6 On written request the landlord must provide the secretary of a Recognised Tenants' Association with details of the managing agent's duties and allow a reasonable period for them to comment on the managing agent's duties and performance. The landlord must provide the details and invite comment every five years thereafter and whenever the landlord appoints a new managing agent, if a notice has previously been served by a recognised Tenants' Association.

S30 – Landlord and Tenant Act 1985 (as inserted by s44 – Landlord and Tenant Act 1987)

Landlord's specific responsibility

Part 19
Disputes between occupiers

19.1 You should have clear policies and procedures for handling disputes between occupiers and complaints of nuisance from neighbours. The procedures you adopt for handling disputes should be available and their existence made known to both the landlord and tenants and should include response times for their various stages.

19.2 You should deal fairly with all parties. On occasion it may be appropriate to remind complainants that those they complain about may be able to produce counter-arguments in their defence or counter-allegations which are just as real to them as the complainant's grievances. It may be appropriate to remind a complainant of the need for objectivity and confidence as to the grounds for the complaint. Guard against overreaction to a situation; on the other hand, consider whether if you fail to act there may be an action for breach of 'quiet enjoyment'. You should be aware of the wide powers of local authorities to deal with anti-social behaviour and you should have particular regard to complaints of racial harassment.

19.3 Leases/tenancy agreements will sometimes specify that a procedure, such as arbitration, should take place where there is a dispute between occupiers. Arbitration can be cheaper and often more effective than litigation. You should also consider other ways of resolving disputes, such as through mediation.

You should bear in mind however that where the dispute refers to service or administration charges, any clause in a lease specifying that arbitration must be used is not valid, unless it is as a result of an agreement after the dispute has arisen.

S27A(6) – Landlord and Tenant Act 1985 (as inserted by s155 – Commonhold and Leasehold Reform Act 2002)

Schedule 11 – Commonhold and Leasehold Reform Act 2002

19.4 On receipt of a complaint in writing, you should investigate and (if under your control) enforce the conditions of occupancy on other residents in the building, subject to consideration of cost implications. If the remedy is not under your control you should advise the tenant making the complaint to notify the local authority for assistance. You should take into account the requirements of the lease/tenancy agreement and the possibility of an action for breach of quiet enjoyment if you do not act.

19.5 In considering enforcement action you should have regard to the availability of supporting evidence and the willingness of others to attend any hearing that may be necessary.

Part 20
Complaints and disputes about managers and managing agents by tenants

20.1 You should have a clear procedure for handling complaints and grievances. The procedure should include a series of steps that dissatisfied clients/customers can take to resolve problems or misunderstandings.

20.2 The procedure should provide for complaints about your staff to be made to a responsible principal and for them to be investigated quickly and fairly.

20.3 The procedure should be made available and its existence made known to the landlord (if he is not also the manager), and tenants, and it should include response times for its various stages.

20.4 Where the manager is not the landlord, the procedure should usually allow for the tenant to complain to the landlord.

20.5 The lease/tenancy may contain a disputes procedure such as arbitration. Such formal arrangements may involve extra costs, and any such agreement contained in a long lease is not valid, unless it is as a result of an agreement after the dispute has arisen – see Part 19. It is desirable to try to resolve the dispute by informal means before turning to any formal provision in the lease or tenancy.

20.6 Qualifying tenants have the right to have a management audit carried out. Landlords and managers must comply with valid notices in this respect. (For further details, see Appendix II.)

S76 – Leasehold Reform, Housing and Urban Development Act 1993

20.7 You should bear in mind that where the dispute refers to service or administration charges, any clause specifying that arbitration must be used is not valid unless it is as a result of an agreement after the dispute has arisen.

Part 19 contains more information about disputes.

S27A – Landlord and Tenant Act 1985 (as inserted by s155 – Commonhold and Leasehold Reform Act 2002)

Schedule 11 – Commonhold and Leasehold Reform Act 2002

Part 21
Arrears of service charges

21.1 You should ensure that you have an efficient system to monitor service charges and other levies when due, and if not paid you should communicate promptly with the tenant and in accordance with the law where this applies, e.g. the ground rent notice. Where housing benefit is being paid direct to the landlord/landlord's agent, you should inform the tenant promptly if benefit payments cease or are varied.

21.2 You should keep the landlord informed of any situation involving significant arrears as soon as practicable.

21.3 The landlord's instructions should be taken as to the next steps. If a solicitor needs to be appointed this should be with the landlord's authority and it should be confirmed that the landlord would be responsible for the costs.

21.4 If legal proceedings are necessary it is best to consult a solicitor as in most cases it is necessary to serve a prescribed form of notice prior to seeking possession of the premises through the courts, and you should make the tenant aware of this.

Note: It will first be necessary to have a determination of a breach of the lease from a Leasehold Valuation Tribunal (LVT).

S168 – Commonhold and Leasehold Reform Act 2002

21.5 The landlord cannot exercise re-entry or forfeiture rights for failure to pay service charges or ground rents until the appropriate statutory notices have been served (including demands for ground rent) and it is established that the sum is lawfully due. The statutory procedures in this regard must be adhered to.

S81 – Housing Act 1996 (as amended by s170 – Commonhold and Leasehold Reform Act 2002)

Ss 166–171 – Commonhold and Leasehold Reform Act 2002

21.6 To try to avoid incurring legal costs you should make direct contact with the tenant in cases where arrears continue to accumulate and advise them to seek independent advice, e.g. from a housing advice centre, citizens' advice bureau, LEASE or a solicitor. Before doing so you should, however, make yourself aware of any legislation requiring notices to be served for the payment of ground rent, and summaries of rights and obligations to be sent when demanding service charges and administration charges. You should also make yourself aware of the legislation concerning forfeiture of leases for failure to pay ground rent, service charges or administration charges.

Ss 166–171 and schedule 11 – Commonhold and Leasehold Reform Act 2002

Landlord and Tenant (Notice of Rent) (England) Regulations 2004 (SI 2004/3096)

Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004 (SI 2004/3086)

S81 – Housing Act 1996 (as amended by s170 – Commonhold and Leasehold Reform Act 2002)

Appendix I
Lease variations

I.1 A lease can be varied by mutual agreement between all the parties concerned but part IV of the *Landlord and Tenant Act* 1987 also provides for the ability to seek a variation of long leases in certain circumstances where a variation cannot be agreed.

Part IV – Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

I.2 Either party to a long lease of a flat can apply to a Leasehold Valuation Tribunal (LVT) to vary a lease considered to be defective. Section 35 of the *Landlord and Tenant Act* 1987 sets out the grounds where this procedure applies. These are principally where the lease does not make satisfactory provisions for the following:

S35 – Landlord and Tenant Act 1987 (as amended by ss 162 and 163 – Commonhold and Leasehold Reform Act 2002)

a) repair or maintenance of the flat or block or any other building let under the lease or any building or land over which the lease confers rights, e.g. staircases and common parts;

b) the insurance of the building containing the flat or of any such land or building let under the lease;

c) the repair or maintenance of any installations and the provision or maintenance of services which are reasonably necessary to ensure a reasonable standard of accommodation;

d) the recovery of expenditure where the lease provides for tenants to be liable for the charges of expenditure incurred for the benefit of any other party;

e) the computation of a service charge payable under the lease;

f) amounts payable (by way of interest charges or otherwise) where there is a failure to pay the service charges (in respect of (d) above); and

g) such other matters as may be prescribed by regulations made by the Secretary of State.

I.3 There is also provision for varying leases of two or more flats let by the same landlord where a majority of the parties require a variation. Where there are more than eight leases at least 75% must consent to the variation and not more than 10% oppose it. Where there are fewer than nine leases all or all but one of the parties must consent, but the LVT must agree to it and the landlord constitutes one of the parties concerned.

Ss 35 and 37 – Landlord and Tenant Act 1987 (as amended by ss 162 and 163 – Commonhold and Leasehold Reform Act 2002)

Appendix II
Statutory rights of tenants

Throughout the Code reference has been made to tenant's statutory rights on service charges. In this appendix, a summary has been made of those principle statutory rights. There are other statutory rights given in legislation and this is a summary only rather than a full interpretation of the law. Each right is strictly regulated by detailed provisions. A statutory right is a specific right given through legislation by Parliament which cannot be denied or removed by contract.

Names and addresses

The statutory right to certain information concerning the landlord. (The landlord's name and address).

Ss 1 and 2 – Landlord and Tenant Act 1985

The landlord must notify the tenant of an address in England and Wales where tenants can serve notices (for example in connection with court proceedings). This may be the address of a representative such as a solicitor. Failure to do this means any rent or service charge is not payable *until* this information is provided.

S48 – Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

This name and address must also appear on any written demand for service charge or rent.

S47 – Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

New landlords must notify tenants in writing within two months of the assignment of the freehold otherwise they commit a criminal offence.

Ss 3 and 3A – Landlord and Tenant Act 1985

The right to form a Recognised Tenants' Association (RTA)

Tenants' associations may seek recognition from the landlord or Rent Assessment Committee Panel (Residential Property Tribunal Service). RTAs have certain additional rights to information over and above those available to individual tenants.

S29 – Landlord and Tenant Act 1985

Recognition is formally given in writing and as a general guide such an association should represent at least 60% of the flats in the block where variable service charges are payable.

Information about service charges and the right to challenge those charges

An individual tenant or the secretary of an RTA may ask the landlord for a summary of the costs on which the service charge is based. The landlord must provide tenants with a summary of the costs for the last service charge accounting year giving prescribed information. This summary should be supplied within strict time limits, must be certified by a qualified accountant as defined, and supported by financial evidence (receipts, etc.)

S21 – Landlord and Tenant Act 1985

The landlord must provide an opportunity for the inspection and copying of documents within set time limits.

S22 – Landlord and Tenant Act 1985

A tenant may challenge their liability for any part of the service charge they feel is unreasonable at a Leasehold Valuation Tribunal (LVT), whether they have paid it or not.

S27A – Landlord and Tenant Act 1985 (as inserted by s155 – Commonhold and Leasehold Reform Act 2002)

A summary of tenants' rights and obligations containing words prescribed in regulations must accompany any demand for service charges, otherwise the service charge is not payable until it does.

S21B – Landlord and Tenant Act 1985 (as inserted by s153 – Commonhold and Leasehold Reform Act 2002)

Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257)

Information about administration charges and the right to challenge those charges

Any variable administration charge that is demanded under the lease is only payable to the extent that it is reasonable. A tenant may challenge their liability to pay and reasonableness of the charge at a LVT, whether they have paid it or not.

Schedule 11 – Commonhold and Leasehold Reform Act 2002

Any party to the lease may also seek to vary a lease on the grounds that any administration charge or any formula specified in the lease is unreasonable.

A summary of tenants' rights and obligations containing words prescribed in regulations must also accompany any demand for administration charges, otherwise the administration charge is not payable until it does.

Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258)

The rights of consultation on certain qualifying works and long term agreements (Part 13)

Current legislation gives tenants the statutory right to be formally consulted if the landlord (or managing agent) wishes to enter into long term agreements for more than 12 months or if they wish to undertake qualifying works to the block.

S20 – Landlord and Tenant Act 1985

Detailed regulations include the requirement to serve notices on tenants, invite observations and obtain nominations for contractors (in some cases), and where appropriate give reasons for the contractor chosen.

The landlord will not be able to recover charges beyond the statutory financial limits if he fails to carry out any of the consultation procedures or alternatively fails to obtain a dispensation from a LVT.

Service Charges (Consultation Requirements) (England) Regulations 2003 (and correction) (SI 2003/1987)

Service Charges (Consultation Requirements) (Amendment) (No 2) (England) Regulations 2004 (SI 2004/2939)

Information about building insurance

Buildings insurance costs must be reasonable, and tenants have the right to challenge the landlord's insurance arrangements at a LVT if this is not believed to be the case, whether the costs are demanded as part of a service charge, or whether the tenant is required to insure the property with an insurer nominated or approved by the landlord under the lease.

Schedule – Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002)

Tenants also have the right to ask the landlord in writing for a written summary of the current insurance.

Tenants have the right to inspect the insurance policy.

Schedule – Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002)

Tenants with a long tenancy of a house with a nominated or approved insurer clause in the lease/tenancy have the right to choose their own insurer if the provisions of section 164(2)(a) to (d) of the *Commonhold and Leasehold Reform Act* 2002 are satisfied and they give a notice of cover to the landlord within the period specified in that section.

Schedule – Landlord and Tenant Act 1985 (as amended by s157 and schedule 10(9) – Commonhold and Leasehold Reform Act 2002)

The Leasehold Houses (Notice of Insurance Cover) (England) Regulations 2004 (SI 2004/3097)

The Leasehold Houses (Notice of Insurance Cover) (England) (Amendment) Regulations 2005 (SI 2005/177)

Right to a management audit

Tenants have the right to arrange for a management audit of all the management functions which landlords or their agents undertake at the block. Tenants will have to pay the cost of the audit which must be undertaken by a qualified surveyor or accountant who is not connected with the block or the landlord.

Ss 76–83 – Leasehold Reform, Housing and Urban Development Act 1993

Such a management audit allows the auditor to look at both the accounts and at the structure of the building.

Appointment of a manager by a LVT

Tenants may, subject to certain exceptions, ask a LVT to appoint a manager if they believe the block is poorly managed or the landlord cannot be found. This is a fault based right. Briefly, the general criteria for seeking the appointment of a manager are that there is a breach of the lease/tenancy relating to the management of the block; that unreasonable service charges have or are proposed to be made; that there has been a failure to comply with any relevant provision of a Code of Practice approved by the Secretary of State under section 87 of the *Leasehold Reform, Housing and Urban Development Act* 1993; or where a LVT is satisfied that other circumstances exist. In all cases it must be regarded by a LVT as being just and convenient to make the order.

Ss 21–24 – Landlord and Tenant Act 1987 (as amended by the Commonhold and Leasehold Reform Act 2002)

Right to Manage – subject to qualifying criteria

Tenants also have the right to take over the management of the block themselves or to appoint an agent to manage on their behalf by exercising their rights contained in the Right to Manage (RTM) provisions. There need not be a fault in the current regime. Again regulations are prescribed to govern procedures needed to exercise this right.

Ss 71–113 – Commonhold and Leasehold Reform Act 2002 (Note: Ss 76(2)(c) and 77(1)(a) have been amended by the Civil Partnership Act 2004 and ss 87(4)(a) and 105(3)(a) have been amended by the Enterprise Act 2002 (Insolvency) Order 2003 (SI 2003/2096))

Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 (SI 2003/1988)

RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120)

Right to compulsory acquisitions

In extreme circumstances where the landlord is in breach of his obligations tenants may apply to the county court to acquire the landlord's interest. This is not to be confused with the right to enfranchise.

Ss 25–34 – Landlord and Tenant Act 1987

Right of first refusal

In most circumstances a landlord who wishes to dispose of a block must give qualifying tenants the opportunity to buy it. This right is strictly regulated and subject to time limits and legal advice is essential.

Ss 1–19 – Landlord and Tenant Act 1987

Right to enfranchise or extend your lease

Enfranchisement is the process whereby qualifying tenants of flats who meet the requirements can form a group and buy the freehold interest from the landlord if the building itself satisfied certain criteria.

Leasehold Reform, Housing and Urban Development Act 1993

There are particular requirements over notice periods, deposits, costs and valuation procedures that need to be adhered to.

Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 (SI 1993/2407) (as amended by the Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (England) Regulations 2003 (SI 2003/1990))

Leasehold Reform (Collective Enfranchisement) (Counter-notices) (England) Regulations 2002 (SI 2002/3208)

Similar rights apply to tenants of houses under the *Leasehold Reform Act* 1967.

The Leasehold Reform (Notices) (Amendment) (England) Regulations 2002 (SI 2002/1715)

The Leasehold Reform (Notices) (Amendment) (No 2) (England) Regulations 2002 (SI 2002/3209)

Leasehold Reform (Enfranchisement and Extension) Regulations 1967 (SI 1967/1879) (as amended by the Leasehold Reform (Enfranchisement and Extension) (Amendment) (England) Regulations 2003 (SI 2003/1989)

Right to vary your lease

Subject to the agreement of all parties concerned leases may be varied. This is a particularly useful right in the case of an inadequate or defective lease. In the event that agreement cannot be reached an application may be made to a LVT to vary the lease (see Appendix I).

Part IV – Landlord and Tenant Act 1987 (as amended by Ss 162 and 163 – Commonhold and Leasehold Reform Act 2002)

Right to security of tenure at the end of a long tenancy

Subject to certain exceptions tenants with a long tenancy have security of tenure at the end of the tenancy. This means that they have the right to stay in the property under an assured periodic tenancy. Particular procedures need to be adhered to and where these circumstances occur it may be necessary to seek independent advice.

Schedule 10 – Local Government and Housing Act 1989

Long Residential Tenancies (Principal Forms) Regulations 1997 (SI 1997/3008)

Long Residential Tenancies (Supplemental Forms) Regulations 1997 (SI 1997/3005)

Long Residential Tenancies (Principal Forms) (Amendment) (England) Regulations 2002 (SI 2002/2227)

Additional advice

Further guidance is available from the following:

- The Leasehold Advisory Service (LEASE) – www.lease-advice.org
- Communities and Local Government (CLG) – www.communities.gov.uk/housing/buyingselling

Appendix III
Useful regulations and guidance documents

This is not part of the preceding code which has been approved by the Secretary of State.

REGULATIONS

Please note that this list is not a complete list and the instruments listed may have been amended subsequently. All regulations are available and can be downloaded from the Office of Public Sector Information at www.opsi.gov.uk

The Building Regulations 2000	SI 2000/2531
The Building (Approved Inspectors etc.) Regulations 2000	SI 2000/2532
The Building (Repeal of Provisions of Local Acts) Regulations 2003	SI 2003/3030
The Building (Local Authority Charges) Regulations 1998	SI 1998/3129
Construction (Design and Management) Regulations 2007	SI 2007/320
Control of Asbestos Regulations 2006	SI 2006/2739
Control of Substances Hazardous to Health Regulations 2002	SI 2002/2677
Electrical Equipment (Safety) Regulations 1994	SI 1994/3260
Electricity at Work Regulations 1989	SI 1989/635
Employers Liability (Compulsory Insurance) Regulations 1998	SI 1998/2573
Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1988	SI 1988/1324
Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1989	SI 1989/2358
Furniture and Furnishings (Fire) (Safety) Regulations 1993	SI 1993/207
Fire Precaution (Workplace) Regulations 1997	SI 1997/1840
Gas Safety (Installation and Use) Regulations 1998	SI 1998/2451
Health and Safety (Safety Signs and Signals) Regulations 1996	SI 1996/341
Income Tax (Construction Industry Scheme) Regulations 2005	SI 2005/2045
Lifting Operations and Lifting Equipment Regulations 1988	SI 1988/2307
Management of Health and Safety at Work Regulations 1999	SI 1999/3242

Money Laundering Regulations 2007	SI 2007/2157
Personal Protective Equipment Regulations 2002	SI 2002/1144
Pressure Systems Safety Regulations 2000	SI 2000/128
Private Water Supplies Regulations 1991	SI 1991/2790
Provision and Use of Work Equipment Regulations 1998	SI 1998/2306
The Unfair Terms in Consumer Contracts Regulations 1999	SI 1999/2083
The Unfair Terms in Consumer Contracts (Amendment) Regulations 2001	SI 2001/1186

Full copies of Statutory Instruments and Acts of Parliament can be obtained from:

The Stationery Office
PO Box 29
Norwich
NR3 1GN

T: 0870 600 5522
F: 0870 600 5533

CODES OF PRACTICE AND GUIDANCE NOTES

The publications listed below are in alphabetical order by title for each organisation. The right-hand box contains, where available and relevant, the following information: publisher's reference; year of publication; and ISBN. Contact details for each organisation are given after its list of publications.

Health and Safety Executive

A short guide to the Personal Protective Equipment at Work Regulations 1992	INDG174REV1; 2005 ISBN 0 71766 141 5
Electricity at work: Safe working practices	HSG85; 2003 ISBN 0 71762 164 2
Essentials of health and safety at work	2006 ISBN 978 0 71766 179 4
Health and safety in construction	HSG150; 2006 ISBN 0 71766 182 2
Health and safety in roof work	HSG33; 2008 ISBN 978 0 71766 250 0
In-situ timber treatment using timber preservatives: Health, safety and environmental precautions	GS46; 1989 ISBN 0 11885 413 5
Legionnaire's disease: Essential information for providers of residential accommodation	INDG376; 2003 ISBN 0 71762 207 X
Legionnaire's disease: The control of legionella bacteria in water systems. Approved Code of Practice and guidance	L8; 2000 ISBN 0 71761 772 6

Management of health and safety at work: Management of Health and Safety at Work Regulations 1999. Approved Code of Practice and guidance

L21; 2000
ISBN 0 71762 488 9

Occupational hygiene and health surveillance at industrial treatment plants: Woodworking Sheet No 29 (revised)

Personal protective equipment at work: Personal Protective Equipment at Work Regulations 1992 (as amended). Guidance on Regulations (2nd edition)

L25; 2005
ISBN 0 71766 139 3

Pressure systems safety and you

INDG261; 2001
ISBN 0 71761 562 6

Safety in window cleaning using suspended and powered access equipment

MISC611; 2003

Safety of pressure systems: Pressure Systems Safety Regulations 2000. Approved Code of Practice

L122; 2000
ISBN 0 71761 767 X

Thorough examination and testing of lifts: Simple guidance for lift owners

INDG339REV1; 2008
ISBN 978 0 71766 255 5

Available from:

HSE Books
PO Box 1999
Sudbury
Suffolk
CO10 2WA

T: 01787 881165
F: 01787 313995
www.hsebooks.com

Communities and Local Government

Residential Long Leaseholders: A guide to your rights and responsibilities

08PRL05661; 2007
ISBN 978 1 40980 959 3

Available from:

Communities and Local Government Publications
PO Box No 236
Wetherby
LS23 7NB

T: 030 0123 1124
F: 030 0123 1124
E: communities@capita.co.uk
www.communities.gov.uk

The Royal Institution of Chartered Surveyors (RICS)

Agreement Between the Landlord and Agent Setting Out the Terms of Appointment for the Management of Property	1866; 1996
Agreement Setting Out Terms of Appointment for the Management of a Block of Flats (2nd edition)	11528; 2006
Agreement with Conditions of Engagement for the Appointment of an Agent to Let Residential Property in the Private Sector (2nd edition)	2952; 1998

You should be aware of the wide range of publications available for guidance and good practice in residential management. A full list of RICS publications can be obtained from:

RICS Books Customer Service
Surveyor Court
Westwood Business Park
Coventry
CV4 8JE

T: 0870 333 1600 (select option 2)
F: 020 7334 3851
E: mailorder@rics.org
www.ricsbooks.com

Association of Retirement Housing Managers

ARHM Code of Practice	2006

Available from:

ARHM
Southbank House
Black Prince Road
London
SE1 7SJ

T: 020 7463 0660
F: 020 7463 0661
E: enquiries@arhm.org
www.arhm.org

Additional Advice to landlords, tenants and agents

This is not part of the preceding Code which has been approved by the Secretary of State.

1 Comment and introduction

Due to the legal status of the Code in court and tribunal proceedings, RICS has excluded certain matters from the Code. This is because RICS believes such matters should not be the subject of court or other proceedings.

Good practice for tenants which RICS was advised could not receive statutory backing is also included.

Some of the good practice omitted from the approved part of the Code is the subject of this Additional Advice.

2 Costs to be passed on to tenants

Landlords and managers should appreciate that tenants have a legitimate interest in service levels, the nature and level of costs to be incurred, and in management charges which will form part of service charges, and should therefore consider giving tenants the opportunity to comment on substantial proposals, and/or early notice of significant changes in the likely level of service charges even if not required under the formal consultation procedures.

3 Courtesy and disputes

All parties should conduct their communication, both oral and written, courteously, however strongly they may disagree.

Common Law Tort of Waste

Mediation and reference to an expert by agreement are often worthy of consideration to resolve disputes more quickly, economically and amicably in preference to litigation. The *Housing Act* 1996 and the *Commonhold and Leasehold Reform Act* 2002 empowers the Secretaries of State/appropriate national authority to introduce fees for use of Leasehold Valuation Tribunals (LVT) for certain purposes, and parties may therefore wish to consider whether entering into binding post dispute arbitration agreements or arrangements for expert determinations could result in less costly determination of the particular matter, especially if conducted by written representation. You should consider seeking further guidance from the local LVT in relation to disputes under their jurisdiction. Guidance can also be sought from LEASE.

Managers will often consider it good practice to advise tenants as to their rights (other than those summaries of rights which are required by law), and sources of independent advice.

4 Agreements between managing agents and their clients

Managing agents and their clients should enter into a written management contract and should always replicate the need for specific contractual matters, for example the provision in respect of assignment.

RICS has published standard agreements for the appointment of an agent to manage residential property. These define the services which would be provided by the agent, authorisations of the agent and by the client, arrangements for communications between them, undertakings by the client and bases of remuneration for selection, and makes provision in respect of assignment, termination, liability of the agent, waiver of breaches and arbitration in the event of dispute. There are two standard agreements, one for blocks of flats and another for other property. Schedules are provided for completion to record information and agreements in respect of the particular contract.

Copies may be purchased from the RICS Bookshop at 12 Great George Street, London, SW1P 3AD or online at www.ricsbooks.com

5 Financial obligations

Tenant's specific responsibility

When tenants are away from the property for any length of time they should make arrangements to deal with their financial obligations in relation to the lease. Delays in payment should be avoided as this can prejudice the manager's ability to provide services and meet commitments, as well as depriving all tenants of possible interest where service charge payments are concerned. Tenants should be encouraged to advise managers if they are in difficulty over making payments when they are due.

6 Repairs

6.1 Tenant's specific responsibility

Tenants should notify managers of defects and disrepair as soon as they arise. When absent from their accommodation for long periods tenants may wish to make arrangements for periodic/regular inspections and provide managers with contact names for use in an emergency.

6.2 Common Law Tort of Waste

Tenants should be aware of their duty to use the property they occupy in a responsible manner, for example, turning off water, protecting the property from frost if there is any risk of burst pipes when they are away and unblocking a sink when it is blocked. Tenants must not damage the property and should ensure that their family and guests do not do so.

7 Insurance

Tenant's specific responsibility

Tenants should insure their personal possessions and contents and any special decorations and fittings and should also take out third-party liability insurance where appropriate.

Whilst not a statutory requirement, tenants should tell the manager when a claim against a policy for the building has been paid directly to them, except where this is in respect of personal possessions or does not affect other tenants or the management of the property.

8 Information

8.1 Applications for consents

Whilst not a statutory requirement, tenants and occupiers should notify the manager when they know that an application (e.g. for planning permission) has been made to a local authority or statutory body, either for their own property or when they receive notice regarding an adjoining one.

Tenant's and Occupier's specific responsibility

8.2 Change of occupier or correspondence address

Tenants should tell the manager about any change of occupier and any change in their own address for security reasons, because they are entitled to have certain information and it is in the interest of good estate management. Tenants also have ongoing responsibilities under the terms of their leases/tenancy. Whilst not a statutory responsibility, tenants should also tell the manager if they are going to be absent for more than four weeks.

Tenant's specific responsibility

8.3 Lenders

Tenants should tell the manager the identity of their lenders if it is a requirement of the lease, or a condition of their loan.

Tenant's specific responsibility

9 Applications for consents

You should notify tenants if you or the landlord make an application in respect of the property to a local authority or statutory body, e.g. a planning application.

Manager's/Landlord's specific responsibility

10 Equal opportunity

You must have regard to the full range of legislation relating to equal opportunities. For example there have recently been amendments to the *Disability Discrimination Act* 1995. You should seek further information in relation to how this affects the services that you provide.

Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005)

11 Fire escape

Consideration should be given as to whether tenants in blocks of flats should be advised of means of escape and other action they should take in the event of fire. You should be aware of the requirements in relation to the *Fire and Furnishing (Fire) (Safety) Regulations* 1999. You should also be aware of the *Regulatory Reform (Fire Safety) Order* 2005.

12 On-site staff

From time to time, landlords/managing agents may be required to employ 'on-site' staff and there is significant legislation affecting their employment and housing rights which you should be aware of.

Code of Practice

rics.org

Service Charge Residential Management Code

and Additional Advice to Landlords, Tenants and Agents

2nd edition

This Code is directed at all those associated with the management of residential properties where service charges are payable. First published in 1997, the Code is as relevant now as it was then.

The provision of a home is still a basic requirement. Many residential properties, particularly flats, are managed and maintained by someone other than the occupier. In these circumstances, it is essential that management is undertaken within a proper regulatory framework. This Code provides such a framework to assist in management to the necessary standards. It covers both legislative requirements as well as offering advice on good practice.

RICS believes the Code and Additional Advice will assist residents, owners and occupiers and equip providers of property management services with an understanding of the legislative landscape within which properties are managed together with advice on good practice. Furthermore, it will assist occupiers in obtaining their legal and equitable rights whilst also providing the practitioner with support for decisions taken in a sector where many problems arise due to a lack of understanding of the obligations and duties of each party.

ISBN 978-1-84219-168-2

RICS the mark of property professionalism worldwide