

**Law Commission Consultation on Right to Manage  
Response from NAEA Propertymark  
April 2019**

**Background**

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

**Executive summary**

- NAEA Propertymark agrees that the Right to Manage (RTM) should be extended to leasehold houses.
- More needs to be done to ensure that owners of freehold houses subject to estate charges can qualify for the Right to Manage.
- The current requirements for exercising the Right to Manage need to be simplified.
- It should be mandatory that RTM company directors are correctly and sufficiently trained.
- The First-tier Tribunal (Property Chamber) needs further ability to waive defects and amend claim notices.

**Q1. We provisionally propose that the RTM should be exercisable in respect of leasehold houses as well as flats. Do consultees agree?**

3. Yes, NAEA Propertymark agrees that the RTM should be exercisable in respect of leasehold houses as well as flats, as it is unjust that house leaseholders do not have aligned rights with flat leaseholders which is contributing to leaseholder dissatisfaction. Further, the Government must also amend the Commonhold and Leasehold Reform Act 2002<sup>1</sup> by ensuring it works for multi-building sites as well as single-building RTMs including houses and freehold properties.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2002/15/contents>

By giving house leaseholders the opportunity to exercise RTM, the Government will be ensuring aligned rights for all leasehold homeowners who are subject to charges for management of common areas. Not only will this benefit future homeowners, but it will also go some way in remedying issues faced by existing leaseholders, bringing a level of faith back into the tenure.

4. We would argue that it is unjust that the increasing number of house leaseholders do not have aligned rights with flat leaseholders for practices such as the RTM and similarly with the Right to First Refusal when their freehold is sold on. The consequence of this, is that house leaseholders have found themselves “trapped” with their management company and without rights to contest onerous charges.
5. NAEA Propertymark published research in September 2018, *Leasehold: A Life Sentence?*<sup>2</sup>, which found that 94 per cent of leasehold homeowners surveyed regretted buying a leasehold. Further, 93 per cent of respondents stated that they wouldn’t buy another leasehold property.<sup>3</sup> This high level of dissatisfaction can be attributed to many factors, but notably a lack of rights where the owners of leasehold houses are concerned.
6. We believe that in the event of house leaseholders being given the RTM, the Commonhold and Leasehold Reform Act 2002 needs to be clearer in its allowance of multi- building RTMs. Although multi-building RTM companies are allowed by the Commonhold and Leasehold Reform Act 2002, it is not explicitly detailed as such and despite 16 registered RTM companies managing multi-building sites confusion surrounds application criteria in order to exercise this right. However, it was affirmed in *Fencott Ltd v Lyttleton Court 1 14-34a RTM Company Ltd* that multi-site RTM companies are allowed, provided that each block of flats satisfies the RTM criteria.<sup>4</sup> The legislation would need to be amended moving forward to ensure that it works for sites that includes houses, and potentially for freehold houses subject to service charges on estates.

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<sup>2</sup> <https://www.naea.co.uk/media/1047279/propertymark-leasehold-report.pdf>

<sup>3</sup> [Ibid.](#)

<sup>4</sup> [https://www.falcon-chambers.com/images/uploads/articles/The\\_Right\\_to\\_Manage\\_Seminar\\_.pdf](https://www.falcon-chambers.com/images/uploads/articles/The_Right_to_Manage_Seminar_.pdf)

**Q2. Do consultees think leasehold houses qualifying for the RTM would increase the number of RTMs? Do consultees think this would be used by leaseholders of houses to acquire single-building RTMs, or only to join multi-building RTMs on estates?**

7. Yes, NAEA Propertymark believes that leasehold houses qualifying for RTM will increase the number of RTMs, and that this will be used by leaseholders of houses to acquire single-building RTMs and multi-building RTMs on estates. This will make the process simpler and will result in an increase of single-building RTMs in addition to multi-building RTMs.
8. Despite the number of registered RTMs since introduction of the Commonhold and Leasehold Reform Act 2002 being relatively low at between 5,000 and 6,000,<sup>5</sup> we would argue that this is down to the complexities involved with application and not a reflection of a lack of appetite. To this end, the existing RTM process must be simplified, as in its current standing the process can be delayed or blocked through trivial issues put forward by the freeholder and the criteria to exercise the RTM is complex and excludes many leasehold homeowners. Subsequently, this often results in very few homeowners attaining the RTM.
9. Should changes be made in simplifying the process, and house leaseholders are given aligned rights with flat leaseholders, we agree that the number of RTMs will increase. We believe that whilst there is a potential that there will be more single-building RTMs (particularly in the case of houses), there is also a potential for multi-building RTMs on estates, particularly where clarification is provided as per our answer to Q1. Multi-building RTMs on estates could be of benefit to mixed-tenure estates containing both leasehold and freehold properties, as well as to estates containing houses and flats with shared common areas.

**Q3. We provisionally propose that leaseholders of houses should follow the same process as leaseholders of flats in order to acquire the RTM. Do consultees agree?**

10. Yes, NAEA Propertymark agrees that leaseholders of houses should follow the same process as leaseholders of flats in order to acquire the RTM.

**Q4. We provisionally propose to adopt the same approach as in our proposals relating to enfranchisement, so that the RTM will be exercisable over “residential units.” Do consultees agree**

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<sup>5</sup> Law Commission symposium on proposals to reform the law of Commonhold and the Right to Manage, 19 February 2019

**it should be a consistent approach? If not, how can we justify different terminology and what should it be?**

11. Yes, NAEA Propertymark agrees that there should be a consistent approach as in the Law Commissions proposals relating to enfranchisement, so that the RTM will be exercisable over “residential units.” Making amendment to the Commonhold and Leasehold Reform Act 2002 to include “residential units” as opposed to “flats” will ensure that RTM is workable for existing and future leaseholders in both flats and houses. However, this will not empower those living on sites that include freehold houses but are still subject to ‘estate charges.’ The Government has stated that it is “currently considering whether freeholders should have the right to change the provider of maintenance services by applying to the First-tier Tribunal (Property Chamber) for the appointment of a new manager.”<sup>6</sup> We believe this should be taken further, where possible, to ensure that freeholders on these estates have aligned rights with leaseholders in having the choice and ability to participate in an RTM.

**Q9. We provisionally propose that one qualifying tenant should be able to claim the RTM over: (1) buildings which contain no other residential premises; and (2) buildings in which there are no other qualifying tenants. Do consultees agree?**

12. Yes, NAEA Propertymark agrees that one qualifying tenant should be able to claim the RTM over buildings that contain no other residential premises and buildings in which there are no other qualifying tenants. This provision would allow for single building RTMs on leasehold houses as discussed in Q1.

**Q10. We provisionally propose that the requirement for at least two-thirds of the flats in the premises to be held by qualifying tenants should be reduced to 50 per cent. Do consultees agree?**

13. Yes, NAEA Propertymark agrees that the requirement for at least two-thirds of the flats in the premises to be held by qualifying tenants should be reduced to 50 per cent.

**Q11. We provisionally propose that the current rule requiring the participation of both qualifying tenants in a two-unit building should be retained, because of the particular risk of dispute and deadlock in the RTM context. Do consultees agree?**

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<sup>6</sup> <https://www.theyworkforyou.com/wrans/?id=2019-04-09.242679.h&s=speaker%3A24769#g242679.r0>

14. Yes, NAEA Propertymark agrees that the current rule requiring the participation of both qualifying tenants in a two-unit building should be retained, because of the particular risk of dispute and deadlock in the RTM context.

**Q12. We provisionally propose that the exemption for buildings containing more than 25 per cent non-residential premises should be removed, so that the RTM could be acquired in respect of such buildings. Do consultees agree?**

15. Yes, NAEA Propertymark agrees that the exemption for buildings containing more than 25 per cent non-residential premises should be removed, so that the RTM could be acquired in respect of such buildings. This will provide leaseholders living in such buildings with two things. Firstly, greater protection against onerous charges and secondly, options to change their management where appropriate.
16. Many leaseholders live in units above shops or other commercial property, and due to the exemption for buildings containing more than 25 per cent non-residential premises, they cannot contest service charges either by changing their managing agent or invoking the Right to Manage. Further complications arise where the non-residential units have basement levels, regardless of whether they are in use or not. One particularly concerning example of the impact this exemption has, is of a leaseholder whose freehold was sold on, and the service charge increased from around £500 a year to £7,682.<sup>7</sup> The homeowner could not contest the charge due to over 25 per cent of the building being non-residential. The result of this was that the homeowner, and other leaseholders in the building fell into service charge arrears. If a leaseholder defaults on service charges, they are at risk of the freeholder taking them to Court with the potential of losing their home under forfeiture of lease.<sup>8</sup>
17. By removing the exemption for buildings containing more than 25 per cent non-residential premises, leaseholders in mixed-use buildings will be given better protection against onerous charges placed on them by their freeholder or management company and will provide them with greater choice for whom manages their property and its common areas in addition to added security where forfeiture of lease is concerned.

<sup>7</sup> <https://www.theguardian.com/money/2017/sep/01/service-charge-flat-bankrupting-me-heinz-property>

<sup>8</sup> <https://www.lease-advice.org/fag/forfeiture/>

**Q15. We provisionally propose that shared ownership leaseholders with long leases should be qualifying tenants for the purposes of RTM, regardless of whether they have staircased to 100 per cent. Do consultees agree?**

18. Yes, NAEA Propertymark agrees that Shared Ownership leaseholders with long leases should be qualifying tenants for the purposes of RTM, regardless of whether they have staircased to 100 per cent. This will have impact in two ways. Firstly, the rights of homeowners will be aligned and secondly, may reduce staircasing.
19. By allowing Shared Ownership leaseholders to meet the criteria for a ‘qualifying tenant’ for the purposes of RTM, the rights of homeowners will be aligned. Shared Ownership properties, particularly flats on multi-building estates, often have shared amenities and communal areas. For this reason, these leaseholders should not be disqualified from the RTM. As leaseholders of Shared Ownership properties, this does not necessitate that they will not have shared issues with the management of their building or estate as with other leaseholders (and potentially freeholders).
20. Furthermore, the level of staircasing should be irrelevant to their claim on management, as this has no impact on service charges, only the level of rent paid in addition to the mortgage repayments on the property.

**Q16. We provisionally propose that the law should be changed to allow leaseholders to qualify for the RTM in premises with a resident freeholder. Do consultees agree?**

21. Yes, NAEA Propertymark agrees that the law should be changed to allow leaseholders to qualify for the RTM in premises with a resident freeholder. This exemption inhibits leaseholders from exercising rights enjoyed by other flat leaseholders and can mean that they have little protection in way of contesting decisions made by the resident freeholder, where either the landlord or an adult member of their family lives within the building.
22. Leaseholders are inhibited because the ‘Resident Landlord Exemption’ currently applies where the premises are not a purpose-built block; not exceeding four flats; and one of the flats is occupied by the freeholder or an adult member of their family (as their only or principal

home in the last 12 months).<sup>9</sup> Whilst this would encompass mainly smaller blocks, it is still a barrier to leaseholders within these units.

23. Furthermore, should the law change and all properties with a resident landlord become eligible for RTM, as currently applies, the landlord will be entitled to membership of an RTM company should it take over management. The landlord's voting rights as a company member will be determined by their units owned within the block, where no units are owned and only the freehold is, the landlord has the right to one vote. Therefore, even where the RTM is successful, the resident landlord will still have influence in voting on decisions.<sup>10</sup> Due to the landlord retaining a level of influence over the management of the building, we believe that leaseholders should be allowed to qualify for the RTM where there is a resident freeholder.

**Q22. We provisionally propose that National Trust properties should be excluded from the RTM. Do consultees agree?**

24. Yes, NAEA Propertymark agrees that National Trust properties should be excluded from the RTM. This reflects other leasehold practice policy recommendations where National Trust properties have been exempted due to the property being held inalienably.

**Q42. We provisionally propose that training for RTM company directors should be encouraged and well-publicised, but not mandatory. Do consultees agree?**

25. No, NAEA Propertymark does not agree that training for RTM company directors should be encouraged and well-publicised, but not mandatory. To ensure best practice, and greater protection for leaseholders under the management of RTM companies, we believe that training should be mandatory for all company directors. Taking this further, where applicable, RTM company directors should also be suitably qualified where appropriate.

26. NAEA Propertymark is a member of the Regulation of Property Agents Working Group (RoPA),<sup>11</sup> alongside our sister organisation ARLA Propertymark. RoPA is made up of property experts from across the sector, with an aim to raise standards. This includes considering the case for regulation and mandatory qualifications for professionals spanning the property sector. In November 2017, our sister company, ARLA Propertymark responded to the

<sup>9</sup> <https://www.lease-advice.org/advice-guide/right-manage/>

<sup>10</sup> <https://www.gov.uk/right-to-manage-a-guide-for-landlords>

<sup>11</sup> <https://www.gov.uk/government/groups/regulation-of-property-agents-working-group>

Government's Call for Evidence on 'Protecting consumers in the letting and managing agent market.'<sup>12</sup> ARLA Propertymark argued that, "ensuring that the whole housing market is under the same regulatory umbrella will reduce confusion, inconsistency and cases of where services fall between different regulatory regimes."<sup>13</sup> Within the context of regulation for property agents, including managing agents, it should also be stipulated that RTM company directors are also subject to a set of minimum standards, including mandatory qualifications.

27. With recommendations from RoPA expected by Summer 2019, it could be likely that block management agents will be required to hold mandatory qualifications and training in order to continue working in the sector. For this reason, RTM company directors should also be suitably qualified and trained. Consideration must also be taken in that RTM companies can differ in their makeup. Some may be professional RTM companies already managing other residential units, whereas others are made up solely of resident leaseholders that have grouped together to enforce their RTM and may or may not have experience in block management.
28. Ultimately, company directors are required to be more than just a figurehead for the RTM. They will manage the RTM, and will thus learn about company procedures, or will need to employ someone to advise on these matters. As limited liability companies, directors are responsible for the Articles of Association (which are written rules concerning the running of the company as agreed by shareholders, guarantors, directors and the company secretary) and must adhere to the duties associated with the nature of the company.<sup>14</sup> The duties of an RTM company director will continue on an ongoing basis and in addition to the responsibilities involved within a limited company, they are also responsible for the management of residential property encompassed by the RTM including health and safety law.<sup>15</sup> RTM company directors must also be aware that if they are not adhering to a Government-approved Code of Practice, although not mandatory, leaseholders can use this as a ground as application to the First-tier Tribunal (Property Chamber) to appoint a new manager or end the RTM altogether.

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<sup>12</sup> <https://www.arla.co.uk/media/1046621/protecting-consumers-in-the-letting-and-managing-agent-market.pdf>

<sup>13</sup> [ibid.](#)

<sup>14</sup> <http://www.flat-living.co.uk/advice/1073-directors-are-you-taking-your-responsibilities-seriously>

<sup>15</sup> <https://www.lease-advice.org/advice-guide/right-manage/>

29. Considering the above, RTM company directors should be required to undertake a level of training to evidence an understanding of their duties and responsibilities as a director. Furthermore, where the director is involved with the management of the properties under the RTM, they should be required to receive training in block management similar to the training that will be required of block managing agents. This will ensure a level playing-field across the tenure whether a block management company is managing on behalf of homeowners or not.

**Q43. We provisionally propose that the Government should ensure that training resources for prospective RTM directors are provided free of charge. Do consultees agree?**

30. Yes, NAEA Propertymark agrees that the Government should ensure that training resources for prospective RTM directors are provided free of charge. Taking this further, the Government must consider the accessibility of these resources by making them available in hard copy, digital copy and online.

**Q59. We provisionally propose that the tribunal should be given a power to waive defects or allow amendments in the claim notice and make any other directions it considers appropriate. Do consultees agree?**

31. Yes, NAEA Propertymark agrees that the Tribunal should be given a power to waive defects or allow amendments in the claim notice and make any other directions it considers appropriate. In its current form, many leaseholders wishing to exercise the RTM have their claim thrown out due to small, often rectifiable, issues. This means that the system favours the freeholder, adding further frustration to the process and doing little to help leaseholders challenge poor management. By enhancing the powers of the Tribunal to rectify inconsistencies therefore providing the leaseholders with greater protection, more leaseholders will be encouraged to exercise the RTM.

32. As per Section 78 of the Commonhold and Leasehold Reform Act 2002,<sup>16</sup> an RTM company must give notice to qualifying tenants of an invitation to participate in the RTM. This notice must contain the intention of the RTM company to attain the RTM; names of members of the RTM company; invitation for recipients to become members of the company; and “contain such other particulars (if any) as may be required to be contained in notices of invitation to

<sup>16</sup> <https://www.legislation.gov.uk/ukpga/2002/15/section/78>

participate by regulations made by the appropriate national authority.”<sup>17</sup> In addition to these requirements, the notice must also be accompanied by a copy of the RTM company’s Articles of Association or include a statement about inspection and copying of the Articles of Association.

33. Further requirements are dictated by the Act in how a statement of inspection is to be issued. It must specify: A place (in England or Wales) where the Articles of Association can be inspected; The times to be inspected of at least two days hours on each of at least three days (including a Saturday or Sunday or both days) within seven days beginning on the day after the RTM notice has been given; A place (in England or Wales) at any time within the aforementioned seven days where a copy of the Articles of Association can be ordered; and the fee payable on provision of this copy (not exceeding the reasonable cost of providing it).
34. Where this procedure is incorrectly administered, for example failing to specify a Saturday or Sunday as days for inspection, this could render the notice invalid. This was the outcome of *Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017]*<sup>18</sup> where the Upper Tribunal concluded that the notice for claim was invalid due to not offering to facilitate inspection on a Saturday or Sunday. Further, the RTM company was not entitled to acquire the RTM as the notice had not been served to the intermediate landlord.
35. Due to there being little protection where defects are present in the RTM claim notice, landlords are able to delay and add further costs to the RTM process, with the claimants then not having the ability to make an amendment to rectify this. This must be stopped because the RTM has no effect on the landlord’s property rights, such as ground rents and new lease claims. RTM only impacts the landlord by the way in which the leasehold properties are managed and due to the complexity of issuing a claim for notice, the Tribunal must be given the power to waive defects and allow amendments.

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<sup>17</sup> [Ibid.](#)

<sup>18</sup> [https://www.falcon-chambers.com/images/uploads/articles/Elim\\_Note\\_.pdf](https://www.falcon-chambers.com/images/uploads/articles/Elim_Note_.pdf)