

Duties of a Director of a Residents' Management Company



A residents' management company is a non-profit making company set up to administer the service charge funds collected on a development where a block needs to be maintained or areas are shared in common with neighbours.

The service charge fund is held in trust for the property owners at the development via this company. Common parts typically include entrance doors, hall ways, stairs, garden areas, pathways, car parks, flower beds, fences and boundary walls and the funding of these common parts will extend to lighting, maintaining and insuring these areas.

The residents' management company is owned by the property owners either as shareholders or as members. From these shareholders or members, directors of the residents' management company are appointed. The company's articles of association will specify the procedures for appointing directors.

The board of directors will usually be made up of property owners that like to have an input in the way the development is run and financed, and who can spare some time each month to liaise with a managing agent/other residents. Whilst they are not normally professional executives they may have relevant skills and experience. They should be able to read and understand straightforward company accounts and budgets. Directors are usually unpaid and provide their time on a voluntary basis.

Typically, directors of residents' management companies are expected to attend up to four directors' meetings per year and the AGM. Between directors' meetings they are expected to be available via email to make collective decisions about day-to-day issues as and when they arise. For example, the approval of quotations for maintenance works.

The most important role of the directors is to appoint and oversee the work of a managing agent. Typically they will work with the managing agent to set and approve the maintenance priorities for each year, agree a budget and the course of action to be taken when problems occur. For example, the non-payment of service charge demands.

Legal Responsibilities

Directors also have legal obligations under the Companies Act 2006 including:

- To act within the powers of the company - a director must act in accordance with the company's constitution (i.e. the articles of association) and exercise his or her powers for the proper purpose.
- To promote the success of company - a director must act in good faith in the way he considers and promotes the success of the company for the benefit of its shareholders/members as a whole.
- To exercise independent judgment and not be swayed by a dominant director.
- To avoid conflicts of interest - a director must avoid situations in which he or she has a direct or indirect interest that conflicts with or may conflict with the company's interests. For example, a director would not be allowed to appoint a contractor or company that they have a financial interest in.
- Not to accept benefits from third parties - a director must not accept any benefit (including a bribe) from a third party which is given because he or she is a director or he does or omits to anything as a director.
- To exercise reasonable care, skill and diligence.



Administrative Responsibilities

Directors are legally responsible for ensuring that the following administrative tasks are completed. These are often delegated to a managing agent or agent providing company secretarial services.

- Maintain and file annual accounts with Companies House
- File the confirmation statement with the Companies House
- Keep the company statutory registers up to date including: the register of members, register of share allotments, register of transfers, register of charges, register of directors and register of secretaries
- For a company limited by shares - issue and cancel share certificates on transfer of shares
- For a company limited by guarantee - issue and cancel membership certificates
- Maintaining and updating the public register at Companies House including filing 288a, 288b and 288c (particularly for non-resident directors)
- Hold regular board meetings to facilitate the management of the company
- Call annual general meetings (if required by statute) and extraordinary general meetings (where necessary)

Failure to complete some of these tasks will result in the company incurring fines and could end in it being struck off which would mean significant legal difficulty for leaseholders. The directors would also be held personally responsible and could be disqualified as directors.

Personal Liability

Directors may incur personal liability, both civil and criminal, for their acts or omissions in directing the company. This could include prosecution for failings relating to health and safety or litigation from a dissatisfied leaseholder. For this reason directors and officers liability insurance is usually put in place.

Further Questions or Queries

If you have any questions or queries that are not covered by this guidance please do get in touch. Further advice on various topics can be found on our website at www.neildouglas.co.uk/advice

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