

Responsibilities of Residential Directors



RMG is frequently asked precisely what are the responsibilities and obligations of a Resident Director of a Management Company. This note has been prepared solely to provide some general guidance and is not intended to be either technical or definitive. It is simply intended to provide some degree of understanding.

- **Accountability:** A resident Director may be held to be accountable for the adverse consequences arising from the activity or inactivity of the Directors.
- **Health and Safety:** The Management Company is responsible for ensuring that risk assessments are undertaken to the communal areas as these areas are deemed "places of work" under the Health & Safety at Work Act, with criminal sanctions imposed for non-compliance.
- **Auditors:** The Company's Auditors are normally initially appointed prior to the Company's release/transfer to residential control. It should be noted that the auditors are not subject to dismissal or replacement by the Resident Directors, but may only be subject to replacement at a General Meeting of the Company. The Auditors are appointed to protect the interests of the Shareholders or Members and are accordingly subject to re-appointment or replacement normally at the Annual General Meeting. Any proposal for replacement of the Auditors should be notified to them, to enable them to attend that General Meeting to speak on their own behalf. Failure to give them due notification and invitation to attend may invalidate any replacement which is otherwise implemented.
- **Company Continuity:** The Resident Directors have the responsibility for ensuring the continuity of the Company. Whilst the Directors have the right to resign from office whenever they wish, steps must always be taken to ensure that the Company in terms of its Members or Shareholders are advised whenever there is a possibility of the number of Directors reducing below the permitted minimum, as set out in the Memorandum & Articles of Association. In the event of such an occurrence being likely, the calling of a General Meeting should be implemented for the purpose of enabling the situation to be clarified to the flat owners and enabling new Directors to be formally appointed. Failure to ensure adequate procedures for continuity could leave those outgoing Directors being responsible for any future collapse of the Company and the implications and problems which may arise therefrom, including costs, Companies House fines and Court penalties. Directors can and will change with a steady process of new appointments and retirements. However, the activities of the Company continue regardless. In this respect, contracts entered into by Directors at any given time on behalf of the Company will continue to be binding upon the Company and subsequent Directors for the term of such contracts. The fact that the current Directors at any time were not a party to the original contract has no bearing upon the validity of the contract with the Management Company.
- **Company Law and Penalties:** The Directors are responsible for ensuring that the Company complies with its statutory obligations under Company law i.e. submission of Annual Returns within 28 days of the due date, filing Annual Accounts within nine months of the end of the financial year, etc. The Management Company would be fined on a fixed penalty system ranging from £150 to £3,000 for late submissions and the Resident Directors may be liable to further penalties imposed by the Courts. In addition the Directors are responsible for managing the company in tune with its Memorandum and Articles of Association. These define the purpose of the company and the rules by which it is to be run.
- **Contract:** There should be an understanding and awareness of the contractual responsibilities placed upon the Management Company by the terms of the Lease, together with the understanding that the Lease itself is in fact a contract. The terms of the contract may not be varied, except insofar as any contract may be varied by the agreement of all the parties in that contract. In practice, this means that for a lease to be varied the active co-operation of all of the lessees is required, with a Deed of Variation being entered into by each flat owner, together with the requisite approval of the freeholder. Very expensive!
- **Control:** The Directors are not a committee. They are the Directors of a Limited Company with all of the authority, control and responsibility arising. They are only required to report to or consult with Residents (in their capacity as Members or Shareholders) at the General Meetings (normally the Annual General Meeting) of the Company.
- **Dissolution:** A Management Company may be struck off and dissolved by Companies House for not complying with its statutory obligations. In the event of such an occurrence, the Resident Directors may be held personally responsible for all of the consequences (it may prove virtually impossible to sell any property and for the costs involved in reinstatement (currently normally found to be in the order of between £2,500 and £3,000). Apart from the basic reinstatement costs, the penalties for late filing of Accounts, previously referred to, may still be applicable!
- **Insurance:** The Directors do have a responsibility to ensure that the premises are adequately insured. Where any change is made in the insurance cover it is prudent to ensure that any savings which might be achieved are not made at the expense of the quality of cover.
- **Lease Compliance:** The Directors must ensure that the Company complies with its contractual requirements as identified within the Lease. However, it is also a pre-emptive condition that the flat owners must themselves be providing the necessary funds to enable the Management Company to discharge its obligations in turn. The Resident Directors do not have the authority to either diminish or increase the Company's contractual obligations. Again, they may be held financially responsible in the event of any such variation.
- **Lease Terms:** The Resident Director should prudently read, understand and become acquainted with the terms of the Lease and with the rights and responsibilities imposed upon the Management Company itself.

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- **Limited Liability:** Whilst the Company enjoys the status and authority of being a Limited Company, this does not leave the Resident Directors in a position of having no personal responsibility for any adverse consequences arising from their period of office. In the event of it being shown that the Directors acted either improperly or where there has been negligence, neglect or default then those Directors may be held personally responsible for the consequences arising therefrom. However, since the Finance Act 1989, it has been possible to obtain Directors and Offices Insurance, RMG have themselves arranged for a policy to be available specifically for the purpose of providing protection for the Resident Directors of Management Companies. Advice in respect of the probable cost is available upon request.
- **Maintenance Charges:** It is the Directors who are responsible for determining the level of Maintenance Charge which is to be set from year to year and for ensuring adequate financial provision is made for the Management Company's obligations. This may require the approval of the Company or Residents at large at an Annual General Meeting or they may themselves have complete authority to set the Charge; this provision varies according to the Lease provision for each Company. However, the Resident Directors are also responsible for ensuring that Residents are duly advised of the Company's actual expenses after the year end with a certified statement, at which time any under-funding or over-funding is either collected from or credited to the flat owners concerned.
- **Managing Agents:** The Resident Directors have the authority to appoint Managing Agents to undertake the management and administration of the Company's affairs under the direction of the Resident Directors. Not only should the Agents be able to properly advise the Resident Directors with regard to the presence of the various Acts and ensure that the Management Company complies with the statutory implications, but they should also draw the attention of the Resident Directors to those occasions where they may be exceeding their authority under the terms of the Lease, to the risk of both themselves and the Management Company.
- **Records:** The Resident Directors should ensure that a record of their Meetings is maintained. RMG will keep notes of such Meetings themselves when they are in attendance, but the Resident Directors may wish to prepare their own minutes instead, or on other occasions. Copies of such minutes should be forwarded through to the Company Secretary for retention with the Company's other records.
- **Registered Office:** The Directors must always have an awareness of the location of the Registered Office of their Company. All formal documentation etc is likely to be sent to the Registered Office i.e. Companies House correspondence, enquiries from the Inland Revenue, etc. The Registered Office is the formal legal address and any individual or organisation which writes to that address is deemed to be in communication. If the Directors are not aware of what is being received at that address and no action is being taken with regard to such communications, the Directors may be held to be negligent and sued for any adverse consequences which may arise.
- **Reserve Funding:** This is a frequent area of contention between Resident Directors and Residents. It is a term within your Lease or Transfer, normally subject to some discretion by the Directors, that the Company may set aside such sum from year to year as may be considered necessary to meet longer term responsibilities of repair, replacement and decoration. It should be understood how the level of the Reserve may affect the funding of work when it is needed. Additionally, the level of Reserve funding may affect the saleability of a flat. The Accounts for your Company should be examined by your prospective purchasers' professional advisers. A recommendation may be made for a retention of part of a mortgage advance equal to the probable cost of works if the Building Society is not satisfied sufficient Reserves are present. This may be sufficient to cause a negotiated Sale to collapse.
- **Shared Responsibility:** All Directors are held to be equally responsible for the actions (and any inaction) on the part of the Company. If an individual appointed as a Director remains in office but does not participate in the decision making process they would still be as much responsible for the consequence of such decisions as those who were actually involved. It is not therefore prudent for those who cannot afford the time or are otherwise regularly unavailable, to continue in office.
- **Solicitors' Enquires:** At the time of sale, solicitors will (should) make enquiry of the Management Company on the matter of outstanding Maintenance Charges etc. It is essential replies are forthcoming. However, the solicitors may also raise request for approval of matters over which the Directors either do not have the authority or would otherwise be most unwise to grant without seeking appropriate advice. Caution needs to be exercised, particularly if the solicitors are seeking any change in documentation.
- **Statutes:** The Resident Directors need to act in accordance with the obligations and requirements placed upon them not only by Company Law, but also the various Housing Acts, the Commonhold & Leasehold Reform Act and the Landlord and Tenant Acts. (The professional advisers to the Company should have necessary awareness of the various acts to be able to assist and advise the Resident Directors).
- **Individual Responsibility:** Individual Resident Directors must take care not to grant approval or authority to a resident or any other person in the name of the Management Company, without the overall approval or a majority of the Resident Directors. If any such approval is given, the resident concerned would probably be entitled to rely on that approval or permission. If the Resident Directors did not collectively approve, or if the approval/permission exceeded the authority of the Management Company, that individual Director may find they are personally responsible for any consequential loss or damage suffered (by either the Management Company, the resident, or other individual or Company involved).

If the Resident Directors require any more detailed understanding of the responsibilities and obligations of being a Director, they should consult with their solicitors. In preparing the foregoing, the reader is reminded that this is not intended to be a definitive explanation. This summary has been prepared by RMG solely for the purpose of providing a degree of understanding for the uninitiated.