

## INFORMATION SHEET - PROPERTY MANAGEMENT COMPANIES

### WHY USE A MANAGEMENT COMPANY?

This information sheet is intended to be a guide to those who instruct Lanyon Bowdler to incorporate and/or assist in the operation of a management company.

Management companies are commonly created to acquire the freehold title of residential developments following the sale of the last unit. They enable a developer to make a **clean exit** from the development, leaving the management, administration and responsibility of the site and its common parts with the company. For example, management companies often collect the service charge from each unit, arrange insurance, address maintenance issues, administer a sinking fund to pay for large single items of expenditure (e.g. a new roof), provide and maintain services to the estate, and maintain common parts such as gardens, driveways, drains etc.

A management company is usually a **private company limited by shares**. When each unit in a development is sold, a share (and

membership in the company) is given to the new unit owner. Usually, management companies are structured so that the developer retains **effective control** of it until the last unit is sold, because otherwise the increasing proportion of ownership by the unit owners as units are sold would enable them to take control of the company. This could, for example, allow the residents to appoint more directors who could out-vote the developer at board meetings and block the registration of new unit owners as members of the company.

Depending on the size of a particular development, several years may pass from the date of incorporation of the management company to the date the last unit is sold, and responsibility passes from the developer to the company. Accordingly, it is important that developers are aware of the duties and responsibilities they have as officers of the company to **prevent the risk of civil and criminal liability** that can occur if the company is not managed properly.

### ADMINISTRATIVE REQUIREMENTS

Property management companies, like any other private company in England and Wales, must regularly file certain information at **Companies House** in Cardiff. Most frequently they are:

- an annual report and **accounts**;
- an **annual return** (an up to date list of directors, members and the secretary);
- notification of **changes of directors or the secretary**;
- notification of the **allotment of shares** (after each unit is sold).

Management companies will typically be exempt from filing audited accounts; however they are usually still required to file **abbreviated accounts**. (If in doubt, Lanyon Bowdler can put you in contact with a firm of auditors who can advise you on this and other

taxation matters.) Failure to do so within the specified period from the filing date results in an **automatic fine** of £100 or up to £1,000 if they are more than 12 months late.

Ultimately, the Registrar of Companies has the **power to strike off a company** if he has good reason to believe that it has become inactive, for example if none of the annual filings are made and no response is received to his enquiries at the registered office. This would have serious consequences for a management company (for example, property owned becomes vested in the Crown), and it is expensive and time consuming to apply to reinstate the company (which will not necessarily be successful). **It is therefore important to make sure all filings are up to date and any changes are notified promptly to Companies House.**

## PROCEDURE WHEN A UNIT IS SOLD

When each plot is sold, the buyer will automatically become a member of the management company and a share certificate is issued in respect of their shareholding. Summarised below is the procedure which must be followed after the sale of each unit:

<b>What Lanyon Bowdler will do</b>	<b>What a director of the management company must do</b>
Draft <b>board meeting minutes</b> to authorise the allotment of a share in the management company to the new unit owner	Hold the meeting, <b>sign</b> the minutes and return them to Lanyon Bowdler
Draft <b>form 88(2)</b> confirming the allotment and send to Companies House	<b>Sign</b> the form and return it to Lanyon Bowdler
Issue a <b>share certificate</b> to the buyer	<b>Sign</b> the share certificate and return it to Lanyon Bowdler
Enter the buyer's details in the <b>register of members</b>	

When the final unit is sold, the freehold of the development can be transferred to the management company, and the developer can **resign** as director or secretary (some of the unit holders must be appointed in the developer's place).

It is important that all of the actions listed above are carried out promptly. **Any delay will prevent the prompt transfer of the freehold to the management company, and/or lengthen the period during which the developer is responsible for it (and therefore at risk) as director and/or secretary.**

## DIRECTORS

The directors of a company are the people who manage it and make decisions about what the company does. They have a considerable amount of power so there are a variety of safeguards to protect members, derived from the law and the company's constitution (**memorandum** and **articles of association**).

If there is only one director and a secretary of the company, they cannot be the same person. A 'person' includes a body corporate – so, for example, someone from the developer could act as the director and then appoint a company that specialises in company secretarial matters, such as Lanyon Bowdler Limited.

### *Duties*

The legal safeguards include a series of **directors' duties** that apply to all companies. The overall theme is that directors must act in good faith in the best interests of the company (rather than the shareholders). In a business context this essentially means growing the company and making a profit, but from a management company perspective (where the size is usually static and the aim is to look after the freehold property, not to make a profit) it is

likely to mean running the company as efficiently as possible.

Other duties of particular relevance to directors of management companies include:

1. **Acting within their powers.** This means the powers set out in the company's constitution, and using those powers only for the purpose for which they were given.
2. **Promoting the success of the company** by considering the consequences of any decision in the long term, the company's relationship with customers (e.g. building contractors who carry out maintenance, cleaners, etc), the impact of the company on the community and environment (e.g. whether to install energy efficient lighting in communal areas), acting fairly between members (e.g. ensuring each leaseholder pays a fair proportion of any costs), and the interests of employees (if any).
3. **Exercising independent judgment, and reasonable care, skill and diligence.** This could include, for example, selecting a building contractor to undertake maintenance or repairs after obtaining an

appropriate number of quotes and satisfactory references.

4. **Conflicts of interest.** It is important that directors **avoid conflicts of interest** between their personal interests and their duties to the management company, for example any interest in a contract in which the company is interested. This could arise, for example, where a developer is a director of the company developing the site and also a director of the management company. Check the company's articles to see whether this restriction is relaxed, which is a common variation with a proviso that such interests are formally minuted at meetings.

## *Liability*

The failure of directors to comply with their duties, or breach of other provisions of company law, can lead to **civil liability** (e.g. having to personally compensate, £ for £, the loss caused to the company) following an action brought by the company itself or the members. There is also the potential for **criminal liability**, for example through breach of environmental legislation.

In order to prevent potential liability, there are various steps directors can take, which are detailed below under [PRACTICAL TIPS](#)

## COMPANY SECRETARY

From 6 April 2008 private companies need no longer appoint a secretary. The duties usually performed by the secretary do not disappear, however, so if a company chooses to remove its secretary those duties must be carried out either by a director or some other person nominated by the directors. So it may still be easier to have an appointed company secretary in most cases.

The secretary's role is broad, even in the context of a management company. Although formal qualifications are not required, it is advisable to have someone (or a specialist company that carries out the secretarial function on behalf of the management company, such as Lanyon Bowdler Limited) who knows what they are doing because of the range of matters they deal with, and the potential adverse consequences that can occur if they are not performed properly (for example a fine for late filing of accounts).

### *Responsibilities*

The usual responsibilities of a management company secretary include the following:

1. **Board Meetings.** Assisting the directors in arranging, holding and taking the minutes of board meetings, where the main decisions of the management company are made.
2. **General meetings of members.** Certain decisions (e.g. changing the name of the

management company or its articles) are required to be approved by the members in general meeting. The secretary will be involved in ensuring that the correct procedures are followed, the relevant paperwork is prepared, and accurate minutes are taken.

3. **Statutory books.** Keeping the registers accurate and up to date.
4. **Companies House.** Filing company information required by law with Companies House, such as the **annual return, accounts**, amendments to memorandum/articles, and notices that shares have been issued (i.e. on the sale of each unit).
5. **Shareholdings.** Dealing with transfers of shares on the subsequent resale of units, issuing share certificates, and dealing with queries from members.
6. **Registered office.** Dealing with all company correspondence and ensuring relevant company information is available for inspection as required by company law.
7. **Deeds.** A document to be executed as a deed by the company is either sealed with the company seal (and witnessed by two directors or by a director and the secretary if required by the articles), or is executed without

a seal by two directors or by a director and the secretary. From 6 April 2008 a single director may sign a deed on behalf of a company provided he does so in the presence of a witness who also signs the deed as witness.

### *Liability*

The company secretary is an 'officer' of the company, and so can be liable for unlawful acts in the same way the directors can, although the scope is narrower than for directors. The same practical tips apply for preventing liability as for directors.

## LANYON BOWDLER AS COMPANY SECRETARY

Lanyon Bowdler Limited offers a full company secretarial service – we can act as the management company's secretary to ensure compliance with company law, at competitive rates. If you have any queries or would like to

obtain further information, please telephone 01952 291222 and ask to speak to Garry Richards or Ruth Finney or email [business@lblaw.co.uk](mailto:business@lblaw.co.uk).

## PRACTICAL TIPS

To avoid potential problems and prevent the risk of liability, the directors and secretary of a management company should consider the following:

1. **Know the rules / stay within your powers.** Be familiar with the company's memorandum and articles, and be aware of powers and duties.
2. **Keep records.** For all board meetings and general meetings, ensure all decisions are properly minuted, use agendas to ensure all matters are covered and keep these records with the statutory books.
3. **Stay up to date** with all matters relating to the company, such as the financial position.
4. As regards conflicts of interest, check whether the director concerned can still vote and count in the quorum and ensure a **full disclosure** is made. A careful record in the minutes of any disclosure should also be made.
5. **Take advice.** If there is any doubt as to what a director or secretary should do in any given situation, it is recommended that they seek professional legal advice before any further steps are taken.

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