

ADVICE NOTE

CHANGING MANAGING AGENTS

A guide to changing managing agents and ensuring a smooth handover



CONTENTS

Summary	3
Good practice for agents handing over management	3
Timescales and responsibilities	3
Management during the notice period	4
Handing over funds	4
Handing over documents	4
Preparing statements of account	4
Disputes over unpaid fees	4
A checklist of issues to consider when dealing with handovers	4
Further information	4

NOTE

As the leading trade body for residential leasehold management, TPI is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

SUMMARY

This Advice Note looks at situations where a landlord, Residents' Management Company (RMC) or Right To Manage Company (RTM) has decided to change managing agent.

When this happens, the outgoing agent needs to handover the management of the block to the new agent. It's important to ensure this process is as smooth as possible so the block can continue to be managed successfully and effectively.

A lot of the information in this Advice Note is also relevant to Right to Manage situations. Where we talk about 'landlords', this also includes RMCs and RTMs.

Good practice for agents handing over management

Managing agents must deal with handovers in a professional, competent and efficient manner. This should be done within agreed timescales and in accordance with the terms set out in their management agreement.

Agents must confirm the termination of their management in writing with the landlord, clearly stating the date when management ceases and when all relevant documents and money will be handed back to the client. They should also specify who will deal with any on-going litigation, disputes, arrears collection and whether there are any fees to be charged.

All relevant information must be handed over to the landlord within four weeks of the handover date, or as otherwise specified in writing. As a minimum this should include contact details for leaseholders and information about contractors and insurance.

Any funds that aren't needed to manage the block leading up to the handover date must also be passed on. The remaining balance must then be handed over at an agreed later date (no later than three months after the handover, unless otherwise agreed) along with the statement of accounts made up to the date of handover.

The managing agent must also prepare reconciled accounts with itemised accruals and prepayments up to the final date of management. This should include schedules of arrears, creditors and debtors. Again, this should be passed on no later than three months after the handover date, unless otherwise agreed.

When a managing agent resigns

If a managing agent resigns, they should respect the terms of the management agreement when giving notice. The resignation should be put in writing and spell out how and when they will hand back all relevant documentation and money to the client.

If an agent wants to resign on terms not set out in the management agreement, then they will need the approval of the landlord, RMC or RTM to do so.

When a landlord, RMC or RTM wants to terminate the contract

Landlords, RMCs and RTMs are also bound by the terms of their management agreement when it comes to removing a managing agent. Ignoring the terms could lead to disputes with the agent so it's not recommended.

It can also be counterproductive to try and reduce the notice period if you're unhappy with the service from your current agent. Throwing a new managing agent into a situation in haste without taking time to understand all the facts can cause more problems: the outgoing agent will still be owed fees under the contracted agreement, and the new agent may not have any funds to start providing services.

Timescales and responsibilities

Regardless of how the management has been terminated (whether the agent resigned or the landlord terminated the contract), the outgoing and new agents should appoint someone to be responsible for overseeing and coordinating the handover.

Landlords, RMCs and RTMs are also bound by the terms of their management agreement when it comes to removing a managing agent. Ignoring the terms could lead to disputes with the agent so it's not recommended.

The new agent must present the outgoing agent with a detailed handover checklist, agree a timescale and encourage them to pass on any relevant documents. The majority of unspent funds must also be passed to the incoming agent on or before the agreed handover date — the new agent can't be expected to manage without funds.

Management during the notice period

During the notice period, leaseholders should be kept fully informed by the landlord, RMC or RTM of what's happening.

Any third parties to the contract should also be contacted including estate staff, who may be the subject of Transfer of Undertakings Protection of Employment Regulations (TUPE).

Other key issues that must be agreed if not covered in the management agreement are who will deal with ongoing litigation, disputes and arrears collection. It's vital that all parties know who will be dealing with these issues during and after the handover.

It's not always wise to ask your new agent to begin management during the notice period, even if you're willing to pay management fees to both incoming and outgoing agents for the same period.

Handing over funds

Handing over funds should be done in two stages:

1. The outgoing agent must pass over any funds that aren't needed to manage the block leading up to the handover, on or before the takeover date.
2. Once the 'on account' funds have been safely transferred to the new agent, the balance of funds should be transferred no later than three months from the termination date, unless agreed otherwise. Relevant bank statements and a clear reconciliation

of each fund must also be passed on. The incoming agent will need to know how much is held for service charges, reserve funds, ground rents and so on.

It's up to the landlord, RMC or RTM to ensure that the new agent opens a bank account that complies with Landlord and Tenant law. It must be a trust or client account.

Handing over documents

Managing agents should state in their management agreement (or in a separate contract) what documents will be returned to the landlord or passed on to the new agent. They should also make it clear whether any additional fees will be charged for the work involved with the handover.

The outgoing agent should not charge the landlord, RMC or RTM for handing over documents unless it's been agreed in writing, or in the management agreement. There can be no contractual basis for the outgoing agent to seek a fee from the incoming agent for handing over documents.

The outgoing agent may want to keep copies of certain documents or obtain a written undertaking from the new agent that they will be able to access them if required. This is because some documents may be required as evidence at a Tribunal or court case, even several years after the handover. So they may ask the new agents to sign an undertaking not to destroy relevant documents for an agreed period of time.

Documents relating to the affairs of a landlord, RMC or RTM are not the property of the agent and should always be handed back on request.

Right of lien

The right of lien is a right given to another by the owner of property to secure a debt, or one created by law in favor of certain creditors.

In the absence of any contractual provision, managing agents do not have any general right of lien over the documents which belong to their clients. So for example, they can't refuse to return documents just because leaseholders have not paid their service charges.

It's not reasonable for managing agents to use the right of lien when the landlord, RMC or RTM has a genuine dispute about the agent's conduct and fees; the dispute should be resolved by other means.

Preparing statements of account

The outgoing agent must prepare reconciled accounts no later than three months after the date of handover, unless otherwise agreed. This should include itemised accruals and prepayments up to the final date of management, including schedules of arrears, creditors and debtors.

The invoices and receipts supporting the accounting statement should also be handed over because they will be needed to prepare the end of financial year accounts.

If the handover date is the same as the end of the financial year for service charges, then all parties should agree who will be responsible for preparing the service charge accounts, and who will carry out any external examination of them.

Disputes over unpaid fees

Disputes often arise over unpaid fees, especially where there are deficits on the service charge account with large outstanding arrears.

If the outgoing agent is owed fees that are being disputed then they must raise this issue with the landlord, RMC or RTM. They should make clear any deficit in the accounts, what fees they expect to be paid and whether there will be adequate funds to pay those fees at the termination date. It's bad practice for all of this to come out after the termination date.

A checklist of issues to consider when dealing with handovers

Here are a few important things to consider when changing managing agent:

- What notice and handover arrangements are set out in the current management agreement?
- Make sure you agree dates for the handover of documents, keys and funds
- What will the insurance arrangements be after handover and who will be responsible?
- Who will notify suppliers and contractors?
- Are any contracts specific to the outgoing agent? These could also terminate on handover (e.g. energy contract deals)
- Who will be responsible for collecting outstanding arrears or proceeding with litigation?
- Draw up a list of documents that will be handed over
- Agree procedures for holding onto documents if needed
- Agree a timetable for handing over service charge money – what bank account will it be paid into?



- Agree a timetable for drawing up a statement of account up to the handover date
- Who will be responsible for drawing up annual service charge accounts if the handover straddles a financial year?
- What will happen to any staff or contractors working at the property? Do TUPE regulations apply?
- What will happen to any company secretarial records kept by the outgoing agent?

Further information

- For more information about appointing a new managing agent download our free guide 'Appointing a Managing Agent' from the Leasehold Library: www.tpi.org.uk

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this TPI Advisory Note, it must be emphasised that because TPI has no control over the precise circumstances in which it will be used, TPI, its officers, employees and members can accept no liability arising out of its use, whether by members of TPI or otherwise.

The TPI Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.