



## The life of a residents' management company director

Being a Director of a Residents' Management Company is not a job to be taken lightly.

Many leaseholders are now choosing to be directors of their blocks, usually becoming a director of a Residents Management Company (RMC) or Right to Manage Company (RTM)

But what are their duties and obligations as a director? We've provided some information below to help leaseholders understand what they are taking on.

Taking matters back to their simplest form, let's start with the basics.

### What is a residents' management company?

A residents' management company is a particular type of company which for example, has responsibilities relating to blocks of flats. RMCs and RTMs are types of residents' management companies.

With all the blocks, there will be common parts such as the landings, stairwells, gardens, lifts and paths which will need to be managed and maintained.

### What does a management company do?

Under the term of the lease a management company is usually required to take on the maintenance and repair of the common parts and the block structure. They exercise what's commonly called "management functions". They are required to provide certain services and receive service charges to enable them to do so.

### How are all these obligations fulfilled?

All companies have directors. The first directors are elected once the company is set up. As a director, you are accountable to the shareholder/ member and are heavily governed by legislation.

Before agreeing to be a director, you must consider your full duties and liabilities.

**Cassandra Zanelli**

Solicitor and CEO

 [cassandra.zanelli@pmls.co.uk](mailto:cassandra.zanelli@pmls.co.uk)

 [www.pmls.co.uk](http://www.pmls.co.uk)

 [www.legallyspeaking.co.uk](http://www.legallyspeaking.co.uk)





## What are the duties and obligations of a director?

The predominant legislation governing directors is the Companies Act 2006.

This requires certain actions by companies such as registering yearly accounts/ annual returns at Companies House, maintaining statutory registers and for directors to act in a certain way.

Broadly speaking, the seven general duties under the 2006 Act which apply to all directors are:

- To act within powers
- To promote the success of the company
- To exercise independent judgment
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interest
- Not to accept benefits from third parties
- To declare an interest in a proposed transaction or agreement.

A “director” is defined to include any person occupying the position of director, by whatever the name they are called. The duties are owed to the company and if the directors are found to be in breach of these, it is the company who will be able to enforce the duties. It is important to note that this may be initiated by the shareholders/ members if they feel that the directors are in breach of their duties.

It is also important to check the Company’s Article as they can add further statutory duties by placing more onerous requirements on their directors. The Articles cannot, however, dilute the duties imposed by statute.

It is not uncommon for directors of a management company to enlist and employ a managing agent to deal with many of the obligations that a management company will need to fulfil under the lease. A management company will typically deal with all repair and maintenance obligations and company secretarial services.

The 2006 Act is only one of the pieces of legislation that the directors should be aware of, however.

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Solicitor and CEO

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The Health and Safety Executive has issued guidance on directors' duties on health and safety at work. All companies have a duty to ensure the health, safety and welfare of employees whilst at work.

### **When do director's duties commence and end?**

The director's duties to the company commence when they become a director. After resignation, the director is not, in general, under these obligations to the company.

However, certain aspects of the duty to avoid conflict of interest and the duty not to accept benefits from third parties will continue to apply after a person ceases to be a director.

Legislation and the Company's Articles dictate who can be a director and when disqualification may occur. The Courts have certain powers to disqualify a person from being director or taking part in the management of a company. The Articles will also provide certain events in which a director will cease to hold office, such as becoming bankrupt.

Not only are there a number of commercial pressures on directors, there are also a wide range of rules which directors must observe in performing their role.

Being a director is not a job taken lightly ...

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Solicitor and CEO

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