S.20 Consultation and Major Works

ARMA
ASSOCIATION OF RESIDENTIAL MANAGING AGENTS

HDBK 7

LESSEE ADVISORY NOTE 07/07

Note:- One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their lessees as appropriate.

SUMMARY

- S.20 procedures apply to major works whether carried out by resident management companies (RMCos) or other landlords.
- The procedure is prescribed in detail in regulations issued by Government. Failure to follow the detail of the procedure can result in penalties.
- The penalty for failing to consult is to limit to £250 per leaseholder the amount that can be recovered for the major works.
- RMCos that fail to consult lay themselves open to loss of income and claims for negligence.
- Consultation is required with lessees and any recognised tenants association (RTA). In this LAN lessees means lessee and any RTA.

SECTION 20 - WHAT IS IT?

Section 20 is the number of a clause in the Landlord and Tenant Act 1985 as amended. It is a clause to protect lessees. In summary it says that service charges for major works will be limited if the landlord or its agent does not consult lessees first. S.20 severely limits the amount a landlord can charge for major works if the correct consultation procedure is not followed.

WHAT IS THE PROCEDURE?

The procedure is required if the landlord estimates or in fact does spend on major works more than £250 payable by any one leaseholder.

- Stage 1 the Notice of Intention. A notice setting out what works are proposed, why they need doing, inviting comments from lessees, and inviting nominations of contractors from lessees.
- Stage 2 the Statement of Estimates. Once estimates for the works are obtained a notice to all lessees about the costs, how to inspect the estimates and inviting any comments.
- Stage 3 the Notice of Reasons. Once the contract is awarded this notice must be sent if the landlord does not choose the cheapest estimate or any contractor nominated by lessees. It must explain why the landlord chose that particular estimate.

You can obtain a free detailed guide to S.20 procedures from ARMA. See further information section below.

WHY DOES S.20 TAKE SO LONG?

For stages one and two lessees must be given at least 30 days to reply with any comments. So even if an agent can obtain estimates quickly it will take at least 2 and probably 3 months as a minimum. Indeed agents are advised to allow slightly more than 30 days for comments because of delays in post being received by lessees after mailing.

SURELY S.20 DOES NOT APPLY TO RMCOs?

Surely there is no need for resident management companies where each lessee is a member of the company to comply with S.20? We discuss the issues and costs between us anyhow and everyone knows.

No this is wrong. S.20 consultation applies to all landlords and all resident management companies, whether they are landlords or not. If the RMCo is the body responsible for committing the service charges for major works it is subject to S.20 rules.

WHAT ARE THE PENALTIES IF WE FAIL TO CONSULT?

The penalty is that the sums lessees can be made to pay for the major works will be limited. The limit is £250 per leaseholder (joint lessees count as one).

So if an RMCo of a block of 8 flats spent £5,000 on major works and failed to consult; then if the lessees refused to pay, the maximum they can be made to pay in law is 8 x £250 each = £2000. Who would have to find the rest if there was a problem? Well, very possibly, the directors of the RMCo would be liable because they were negligent in failing to follow S.20 rules.

You may argue "surely in our block we all know each other and there will be no arguments." Yes, but what if a flat is sold whilst works are in progress, or the contractor upsets lessees and fails to do a good job. There will be arguments and lessees may well refuse to pay.

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CANNOT TRIBUNALS DISPENSE WITH S.20 RULES?

Yes, Leasehold Valuation Tribunals (LVTs) can dispense with S.20 rules either before or after major works have been carried out; but only if a very good case can be made. LVTs have only considered dispensation generally where there was an emergency and works had to be started at once, or for urgent health and safety reasons.

WON'T TRIBUNALS ALLOW FOR MISTAKES?

In general LVTs have interpreted S.20 rules strictly and have ruled that landlords or RMCos cannot recover the cost of major works in cases where the notices had not given the full 30 days, or failed to state when the date for comments ended, or failed to include how estimates could be inspected. Failure to consult is not justified by an honest mistake, compliance with the 'spirit' of S.20, wrong dates, lowest quote chosen, no prejudice to lessees, good contractor or the fact that the RMCo represents lessees.

FURTHER INFORMATION

- S.20 of the Landlord and Tenant Act 1985.
- The Service Charges (Consultation Requirements) (England) Regulations 2003. SI2003/1987.
- The Service Charges (Consultation Requirements) (Wales) Regulations 2004. SI2004/684.
- S.20 Consultation. A free booklet from ARMA, www.arma.org.uk, or the Leasehold Advisory Service. www.lease-advice.org.

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