

New laws in 1993 and 2002 have prompted a growing number of flat owners in England and Wales to force their landlord to sell to them the freehold of their building through a process called Collective Enfranchisement. Most residents enjoy significant benefits from Enfranchising, including an increase in the value of their flats.

But there is also worrying proof that many, after setting up the required Resident Management Company ("RMC") to buy the freehold, later fail to comply with rules governing company activities and end up getting shut down as a business. Being "struck off" by Companies

related assets, including bank accounts, automatically become property of the Crown and are dealt with by the Crown's nominee government body, the Treasury Solicitor. The Treasury Solicitor does not assume management responsibilities of these properties, but it has the right to sell the assets. Any liabilities of the struck-off company are also not assumed by the Treasury Solicitor.

If the directors of a struck-off RMC want to get the company restored, they must take several urgent steps. They must contact the Companies Court in London and ask for the company to be

to enfranchise since the enactment of the Commonhold and Leasehold Reform Act 2002.

This legislation significantly broadened the legal right that was created with the Leasehold Reform, Housing and Urban Development Act 1993 for flat owners to Enfranchise their building. Because of a dearth of high-quality easily accessible information for leaseholders on how best to avoid pitfalls when buying their freehold, many more RMC's are likely to experience problems as they each seek to re-invent the wheel.

Directors of an RMC that is struck off are advised to act quickly in taking the necessary steps to get the company restored. Once the company has been revived, the board needs to put in place best-practice processes for ensuring that the RMC is a patient that will survive.

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Contact Kat about Rosetta's seminar on June 21, 2006 in London on "Buying Your Freehold: Enfranchisement Made Easy".

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Resident Management Companies Learn Pain of Being Struck Off

By Kat Callo and Simon Groves

Thousands of leaseholders of flats are gaining control of their residential buildings in an exciting nationwide consumer movement, but many are subsequently paying a high price for forgetting that ownership brings responsibility.

House, the government body that registers all companies and maintains their public file, is a serious matter, since it means the company no longer exists and is not allowed to trade. It also means that all assets of the company immediately revert to the Crown.

Anthony Essien, a leasehold law expert, says RMC's are the one category of company most often struck off by Companies House. Essien, who is Principal Advisor at the Leasehold Advisory Service, an organisation funded by the Office of the Deputy Prime Minister, says the main issue in being struck off is non-compliance. This usually involves failure to file annual returns and accounts with Companies House. On average over 100 RMC's are struck off each year.

If a company was considered a person, being struck off is the equivalent of dying. In order to bring the patient back to life, the company must be "restored". In the best of circumstances, a company restoration usually costs more than £1,000 and takes several months of liaising with a number of government bodies to complete. In the case of RMC's, it can be particularly galling since many residents often join forces to buy their freehold after experiencing years of building mismanagement in the hands of the previous landlord. As a result, many residents' groups suffer from organisational exhaustion and burn-out by the time they complete what can be a years-long process of purchasing the freehold.

When a company is struck off, all assets of the company officially become "bona vacantia", which is Latin for "ownerless goods". If an RMC is struck off, the freehold of the building and

restored. The Companies Court will then schedule a hearing three months hence. In order to avoid the costs of hiring lawyers to represent the RMC at such a hearing, the directors then need quickly to provide certain documentation to Companies House and the Treasury Solicitor. If a hearing takes place at Companies Court, costs can reach thousands of pounds.

The most effective way to avoid being struck off is good corporate governance and a clear strategy for running the RMC efficiently. RMC's that most often experience problems with governance are those that seek to do everything themselves while lacking the appropriate commercial or legal background. Conversely, the RMC's that suffer the least amount of teething pain are those that outsource non-strategic functions to qualified experts. This includes hiring a company formation expert to set up the RMC in the beginning and hiring a specialist outside company to act as the RMC's company secretary. Company secretary specialists are hired to ensure, among other things, that annual accounts and other required documents get filed with Companies House in the proper format and within the necessary timeframe.

An alarming number of flat dwellers describe instances of poor corporate governance within RMC's, including a failure by the board to hold Annual General Meetings or proper elections for directors or even a refusal to acknowledge that it is the shareholders, not the directors, that own the company.

Some of these settling-in pains are to be expected, given the rush by many leaseholders

Residentsline

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