



# Right to Manage – A Shared Right

## Corscombe Close Block 8 RTM Company Limited ~v~ Roseleb Limited [2013] UKUT81LC

The availability of the Right to Manage for shared owners has widened as a result of a recent interpretation of the rules for “Qualifying Tenants”.

### Background

The Appellant was a RTM company and on 15 July 2011 applied for a determination under Section 84(3) Commonhold and Leasehold Reform Act 2002 that it was entitled to acquire the Right to Manage Block 8, Corscombe Close, Weymouth.

Block 8 contained 15 flats. The Freehold owner of the block was Roseleb Limited. Four of the flats were let to Weymouth & Portland Housing Association under the terms of a 125 year Head Lease and the Association granted Shared Ownership under leases for a term of 125 years less 3 days. The shared ownership leases contained the usual provisions for the tenants to acquire increasing proportions of ownership of the flats in steps of 10%. None of the shared owners had staircased to 100% at the relevant date. The Respondent Freeholder argued before the LVT (as it was then) that the Notice of Invitation to Participate was defective as it had been served on the tenants and, as their share of the flats was less than 100%, it should have been served upon the Housing Association. The LVT found in favour of the Respondent Freeholder on this point.

### The Law

Without becoming too bogged down in the law, in order to qualify for the Right to Manage you have to be, amongst other things, a Tenant under a “Long Lease”. Section 76 CLRA defines what that is. Section 76(2)(a) defines a “Long Lease” as a term certain exceeding 21 years and Section 76(2)(e) refers to a Shared Ownership Lease where the total share is 100%.

Historically this has been interpreted to mean that shared owners are not Qualifying Tenants for the purposes of the Right to Manage until they have fully staircased to 100%.

### The Appeal

The question for the Upper Tribunal was to decide what happens where you have a Shared Ownership Lease granted for a term of more than 21 years which has not staircased to 100%. Clearly they are unable to qualify under Section 76(2)(e), but can they still qualify under Section 76(2)(a)?

HHJ Mole QC considered that the definitions of a “Long Lease”, can either be read as a series of gateways; so it is enough to pass through any gate to qualify or it could be read as a “stack of sieves”, so a Lease can fall through (a) but then get caught by the specific mesh of (e).

The Judge decided that the former interpretation made more sense. Accordingly, the shared ownership leases were ‘long leases’ under s.76(2)(a) and were the qualifying tenants who needed to be, and were, served with notice.

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## Comment

This decision confirms that for the purposes of the Right to Manage (and in enfranchisement where the statutory definitions of “Long Lease” and “Shared Ownership Lease” are almost identical) a Lessee is to be taken as holding a “Long Lease” if they meet any of the conditions in Section 76. The effect of this is that all Shared Ownership leases granted for a term in excess of 21 years will qualify, regardless of the share held by the Tenant. It is also hard to imagine an occasion where Section 76(2)(e) will apply and, as a result, that sub-section has been rendered virtually obsolete.

Social Landlords should be mindful of this decision in any advice given to Shared Ownership Leaseholders regarding the Right to Manage and could see an increase in the formation of RTM companies and the management of their stock falling into the hands of RTM companies.

For further information, please contact:



JENNIFER BENNETT

**Partner**

023 8001 8362

[jennifer.bennett@capsticks.com](mailto:jennifer.bennett@capsticks.com)



CLIVE ADAMS

**Associate**

023 8001 8360

[clive.adams@capsticks.com](mailto:clive.adams@capsticks.com)

### Capsticks

[www.capsticks.com](http://www.capsticks.com)

 @capstickslp

#### London

1 St George's Road,  
London SW19 4DR  
T +44 (0)20 8780 2211  
F +44 (0)20 8780 1141  
DX 300118 - Wimbledon Central

#### Birmingham

35 Newhall Street,  
Birmingham B3 3PU  
T +44 (0)121 230 1500  
F +44 (0)121 230 1515  
DX 13003 - Birmingham

#### Leeds

Toronto Square, Toronto Street,  
Leeds LS1 2HJ  
T +44 (0)113 322 5560  
F +44 (0)113 242 2722  
DX 713112 - Leeds Park Square

#### Winchester

Staple House, Staple Gardens,  
Winchester, SO23 8SR  
T +44 (0)1962 678 300  
F +44 (0)1962 678 311  
DX 2532 - Winchester