



# A Guide to Becoming a Company Officer

**Information for Directors of  
Residents' Management Companies  
and Right to Manage Companies**

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# Introduction

Living in flats and houses with shared communal areas brings a responsibility to interact with your neighbours in order to keep those shared spaces in good condition. You may be living in an estate where a residents' management company was set up when the estate was built with a clear set of rules laid out in the lease. Some people will have had to fight for their Right to Manage their block from their freeholder. Both sets of circumstances will usually have led to the formation of a formal limited company and companies need directors.

The aim of this booklet is to give you a better idea of what it means to be a director of a residents' company. Directors are, in most circumstances, unpaid volunteers. Without them your valuable asset and its surroundings could sink into disrepair. They are a force behind the scenes of the residential property market. They can be asked to make difficult decisions and manage frustrating situations but in return they gain more control over the way the properties are run. We say "more control" as usually there is more than one director and decisions are taken by a majority vote.

You may be reading this guide because you are considering devoting some of your precious time to making your home and those of your close neighbours better. If so, we hope you will seriously consider a term of office to help the community in your building. It may also be a useful refresher for existing directors, but our hope is that it will inspire and encourage more people to get involved.

## The Pace Team



# Getting Started

**If you are thinking about becoming a Company Director, your first task should be to read a copy of the Memorandum & Articles of Association of the Company (Mem & Arts).**

The Articles of Association define the rules governing how the Company is to be run, including the directors' powers and responsibilities. The Articles also set out how decisions are to be taken: for example, the procedures for calling a board meeting and how many directors are needed to vote on a proposal.

You must act within the powers granted in the Articles of Association. You can only change the Company's objects by getting agreement from a majority of the shareholders. If the Directors act outside the Company's objects, the members may be entitled to take legal action against them.

If the company is established and there is already an existing board of Management in place, an interested property owner can usually apply to join the board ahead of the AGM, or can be co-opted mid-year, with a board Resolution, to be ratified at the following year's AGM although the exact procedures may be detailed in the articles.



# Am I Eligible to Become a Company Director?

First and foremost, you become a director because you want to ensure the best for what is essentially yours, and the other property owners' homes. It is important to understand that decisions should be based on what is good for the whole development, rather than individual preference. It is often possible for a leaseholder to nominate a representative if they do not want to stand themselves.

## **You cannot be a director if:**

- You are under 16
- You are an undischarged bankrupt
- You have been disqualified (for misbehaving as a director previously)
- You are the auditor
- or if the Mem & Arts have a restriction with which you do not comply, such as 'only leaseholders can be directors'. Being a resident in the building may not be enough.

## What Responsibilities would I have as a Director?

Being a director of a RTM or RMC comes with certain responsibilities which fall into two areas; responsibilities to the members of the company and to the property.

### **Responsibilities to Members of the Company**

Any director will find they have both informal and formal responsibilities. Residents of the block may approach you directly to report concerns or request repairs to communal areas. You will have a responsibility to act on these reported concerns. These may be addressed by a simple call to your managing agent to organise trades people. Some more serious matters may need raising at your next board meeting.

**There are also more formal responsibilities which are labelled 'general duties' under the Companies Act 2006 which fall into 7 main categories.**

**At a high level, these are;**

- 1. To act within power which means acting within the company's constitution**
- 2. To promote the success of the company by ensuring your decisions are in the best interests of the building and its residents**
- 3. To exercise independent judgement and not influence or be influenced by other directors**
- 4. To exercise reasonable skill, care and diligence. This means you would be expected to know when a mistake has been made in your area of expertise, or you would reasonably know how to act in the event of a problem**
- 5. To avoid conflicts of interest. Any director needs to avoid situations in which they have, or can have, a direct or indirect interest that conflicts with, or may conflict with, the company's interests**
- 6. Not to accept benefits from third parties which means not accepting bribes in cash, gifts or services. If someone approaches you with a bribe, you should declare it to the other directors.**
- 7. To declare an interest in a proposed transaction or arrangement. A director, who is in any way interested in a proposed or existing transaction or arrangement with the company, must declare the nature and extent of that interest to the other directors. For instance, you could not vote on a decision regarding your own property**

### **Responsibilities to the Property**

As a director of a RMC or RTM, your responsibilities to the property are similar to that of a landlord. You will probably be involved with a number of tasks including organising insurance, collecting funds and organising repairs to the premises. These are often shared among the directors evenly so you will not be expected to undertake all of the tasks required.

This may sound very formal. What you always have to remember is that you are dealing with property owners' money, including your own, and even though there may be a desire to keep service charge bills down, you as a board are responsible for maintaining the property. Failure to do so could result in difficulties further down the line.

Your Property Manager should have the best financial overview of the property as they are aware of cash flow and likely expenditure, including cyclical major works due under the terms of the lease and their input at any budget meeting should be listened to carefully. It is advisable on larger blocks to appoint a director as treasurer to keep a close eye on the finances.

There will also be occasions where decisions you take at board level may not always be widely appreciated by other property owners. Provided as a board, you have taken a decision in the interests of the development as a whole, then you have carried out your role appropriately, and besides, you took the time and effort to stand as a director, whereas the criticising lessee did not.

## Board Meetings

A director needs to set aside some of their free time to attend board meetings, and if they have any specific expertise, they may find they are asked to concentrate on that particular area of the management at board level. The board meeting provides a forum for input from the managing agent and your fellow directors, to receive updates on outstanding issues and to discuss possible solutions.

There may be times when other property owners approach you with matters of concern, when they learn you are a director. This clearly has both benefits and drawbacks. The benefit being that you become aware of certain issues early on and can decide whether it is a matter for the board or should be handled by the managing agent. It also enables you to reassure the property owners that their problem will be looked at. One drawback can be persistent property owners who constantly approach you with their issues. You would need to inform them that they should put their concerns in writing to the board via the managing agent.



# What Liabilities would I have as a Director?

Being a company director is a position of responsibility. As a director or officer of a RTM or RMC, you will have many legal responsibilities and may be held personally liable for any decisions or actions taken whilst in this role. There are situations in which liability can attach to a director personally such as under the Bribery Act 2010, Corporate Manslaughter Act 2007 and general breaches of director's duties.

Providing you act honestly and thoughtfully you have nothing to fear. However, your company ought to have Directors and Officers Liability Insurance to protect against the costs of potential claims for any alleged wrongful acts.

D&O insurance covers past, present and future directors in respect of their personal liabilities for negligent acts, errors or omissions, misstatement or misleading statements, breaches of duty and authority. Individuals can be held liable for their actions and decisions and may not be able to afford the costs of defending legal actions against themselves. As well as covering legal costs and emergency defence costs, it can also extend towards the company itself or anybody named in the proceedings, ensuring comprehensive cover for those managing blocks of flats.

Not all policies cover all eventualities so you should check what yours covers. No D&O policy will cover claims where fraud or dishonesty has been proven or admitted by the director or organisation. Criminal fines or penalties are usually excluded, along with associated costs.

Do also check your managing agent or any other advisors have suitable Professional Indemnity cover and there is a procedure in place to check the insurances of all contractors.

## ARMA

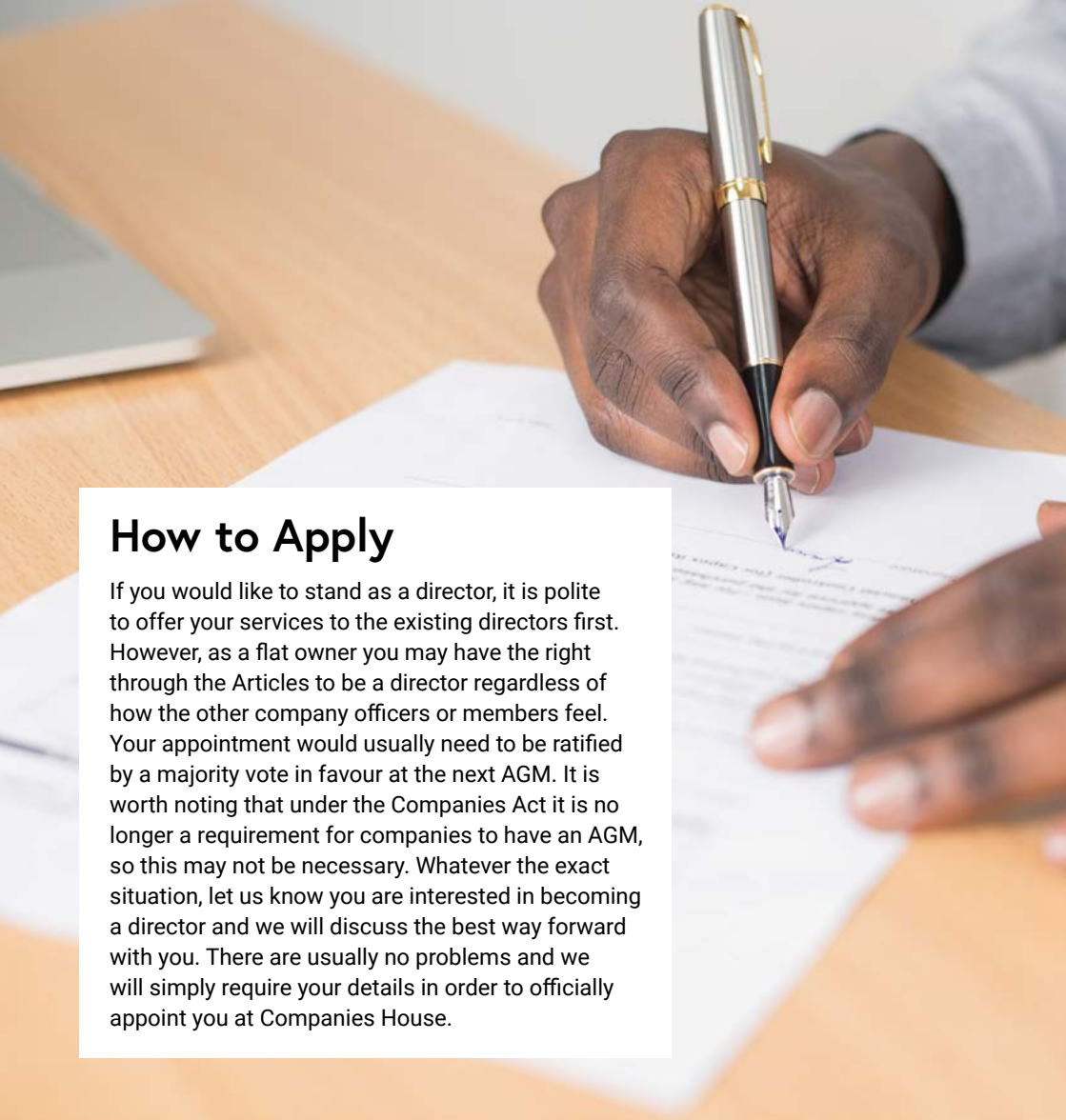
Managing agents should be members of ARMA, the Association of Residential Managing Agents. ARMA is the leading professional body for residential managing agents in England & Wales. The association promotes high standards of leasehold management and professionalism through advice, training and guidance. You can check whether an agent is a registered ARMA agent on the website [www.arma.org.uk](http://www.arma.org.uk). It goes without saying that you'll find Pace on the registered agents list!





## Directors & Officers Insurance

D&O insurance covers past, present and future directors in respect of negligent acts, errors or omissions, misstatement or misleading statements, breaches of duty and authority. Individuals can be held liable for their actions and decisions and may not be able to afford the costs of defending legal actions against themselves. Therefore, it is worth checking your RTM or RMC has D&O insurance in place. As well as covering legal costs and emergency defence costs, D&O insurance can also extend towards the company itself or anybody named in the proceedings, ensuring comprehensive cover for those managing blocks of flats.



## How to Apply

If you would like to stand as a director, it is polite to offer your services to the existing directors first. However, as a flat owner you may have the right through the Articles to be a director regardless of how the other company officers or members feel. Your appointment would usually need to be ratified by a majority vote in favour at the next AGM. It is worth noting that under the Companies Act it is no longer a requirement for companies to have an AGM, so this may not be necessary. Whatever the exact situation, let us know you are interested in becoming a director and we will discuss the best way forward with you. There are usually no problems and we will simply require your details in order to officially appoint you at Companies House.

## Understanding the Detail

If you're interested in becoming a company officer, but would like to understand more about what's involved, visit <https://learn.lease-advice.org/>

This useful website offers a series of free e-learning modules to help leaseholders learn more about managing a building and leasehold law.

# Top Tips from Experienced Directors

- Make sure your managing agent is a member of ARMA (Obviously, Pace meets this criterion!)
- Keep a close eye on financial reports and make sure you understand what you are receiving and if you need to ask questions, do so. For instance, there is nothing stopping your relative's company maintaining your garden as long as this is declared immediately and a proper tendering process has been followed
- If you self-manage, use a third party for your service charge and debt collection to avoid unpleasantness with people you live with
- Check insurances regularly and watch out for expiry dates
- Make sure you have a range of relevant expertise between board members and if not, actively look for a lessee who is a builder or a surveyor, or has accounting or legal knowledge, or whatever expertise or experience you feel you lack as a team
- You must always consider the interests of other stakeholders such as creditors and employees; you must consider the long-term prospects of the Company and its reputation; you must give equal consideration to all shareholders
- In exercising directors' powers, you are required to exhibit 'such a degree of skill as may reasonably be expected' from a person with your knowledge and experience. For example, a chartered accountant might be expected to know if the Company was trading whilst insolvent
- You are generally not liable for the actions of your fellow directors, if you knew nothing about them and took no part in them, but you have a duty to make sure you are informed about the Company's affairs. It is very dangerous to turn a blind eye
- Talk to people in the building when you bump into them so you can keep your ear to the ground and head off potential problems before they arise
- Think about conflicts of interest when you make suggestions or recommend anybody
- Avoid asking contractors or porters for favours
- Ensure you have read and understood the lease for your building. This is key to understanding what you can charge for and how your particular estate works
- When in doubt, get professional help

- Filing the Confirmation Statement with Companies House (formerly known as the Annual return)
- Have a plan for ongoing property maintenance with the help of a surveyor for more complicated sites
- Don't keep the service charge too low – you need a financial cushion for emergencies and changing regulations
- Make sure each year you review the Health & Safety Report and Fire Risk Assessment
- Be aware of the issues surrounding asbestos and make sure you understand your obligation to protect residents, visitors and contractors, should the substance be present in your building
- Blocks with cladding need to be inspected to ensure they comply with fire safety regulations



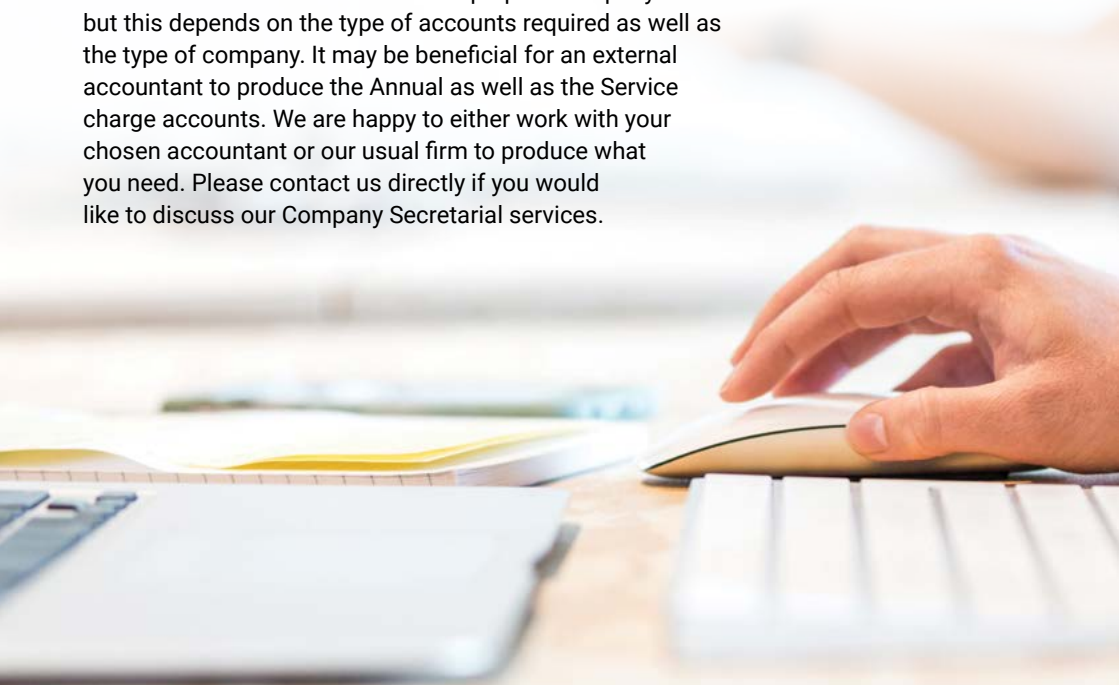
# Company Secretarial Services

Company Secretaries play a vital role in keeping directors up to date with the day to day running of the company. As well as acting as your managing agent, Pace can also act as the Company Secretary for your RTM or RM Company.

By using Pace as your Company Secretary, this allows for directors to fully focus on running the business. A Company Secretary doesn't have to be a director, but they do share some legal responsibilities. We find our typical duties include:

- **Dealing and managing changes of directors**
- **Keeping the register of directors, members and shareholders up to date**
- **Creating copies of any resolutions and agreements and sending these to Companies House.**
- **Arranging and minuting directors' meetings**
- **Providing any information requested or required to statutory authorities**
- **Issuing new or replacement share certificates**
- **Filing the Annual Return**
- **Filing the Annual Accounts**

In some circumstances we can also prepare company accounts but this depends on the type of accounts required as well as the type of company. It may be beneficial for an external accountant to produce the Annual as well as the Service charge accounts. We are happy to either work with your chosen accountant or our usual firm to produce what you need. Please contact us directly if you would like to discuss our Company Secretarial services.



# New Company Officer Form

Version: 202006-1

Before completing this form, please read the information on this website:

[www.gov.uk/guidance/your-personal-information-on-the-public-record-at-companies-house](http://www.gov.uk/guidance/your-personal-information-on-the-public-record-at-companies-house)

<b>Block address</b> (That this application relates to)	
<b>Title</b>	
<b>Full name including any middle names</b>	
<b>Date form completed</b>	
<b>Date of birth</b>	
<b>Home address</b>	
<b>Correspondence address</b> (please be aware this will be on the public register. You can use our office address if you prefer however that means any paper correspondence for you will be sent to us).	
<b>Mobile telephone number</b>	
<b>Landline telephone number</b>	
<b>Email address</b>	
<b>Nationality</b>	
<b>Your occupation and job title</b>	

## Ready to go ahead?

Simply complete the above form and pass it back to us.

We will also need to see a utility bill and one piece of photo ID such as a passport or drivers licence to verify your identity and address.

Photo ID included  Proof of address included

By completing this form, you are giving permission for Pace to process your personal data specifically for the purposes identified. Whenever we ask for sensitive personal data, we will always tell you why, and how the information will be used. You may withdraw consent at any time by completing a Data subject consent withdrawal form which will be provided on request. For further information about our Privacy Policies, please contact our Data Controller at Pace Property Lettings and Management Limited, Meridian Point, 461 – 463 Southchurch Rd, Southend-on-Sea SS1 2PH.

# Director's Checklist

*There are legal requirements for directors of UK companies which we are obliged to check. Also, your block's insurance companies ask us to be sure of the following.*

**Could you please confirm the answer to all of the following is "no".**

If any of these apply to you please let us know immediately and a member of staff will be in touch to discuss this with you at the earliest opportunity.

- a. That in respect of all risks to be insured that no company or underwriter has declined to issue or renew a policy or imposed special terms. .... No
  
- b. That neither you or any director, partner, principal, employee or representative has ever been:
  - 1. Convicted of any criminal offence other than a driving offence and does not have any non-motoring prosecutions pending. This only applies to unspent convictions as detailed under the Rehabilitation of Offenders Act 1974. .... No
  - 2. Prosecuted under the Factories Act or the health & Safety at Work Act or any similar legislation. .... No
  - 3. Served with a Prohibition Notice under the Health & Safety at Work Act. .... No
  - 4. Declared bankrupt or been the subject of bankruptcy proceedings, liquidation, appointment of administrative receiver or administrators or made any arrangement with creditors either in a personal capacity or in connection with any company, business or firm with which any of you have been involved. .... No
  
- c. Neither you or any director, partner or representative has ever had any County Court Judgements made:
  - 1. Against you in a personal capacity. .... No
  - 2. Against any company, business or firm in which any of you have been involved as a director or partner or in a similar capacity. .... No

Signed:

Date:

.....

# An *award-winning* property service



If you want to work with a professional local company that acts with integrity and respect, values its customers and goes the extra mile, contact us to discover why we're the preferred choice in South Essex.

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[pace-properties.com](http://pace-properties.com)

Terms and conditions apply.



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