

HARRISON, LATHAM & COMPANY

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Mary-Louise Wedderburn,

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Mary-Louise Wedderburn, Business Law Department, I.C.A.E.W. Chartered Accountants Hall, Moorgate Place, London, EC2R 6EA

Dear Ms. Wedderburn,

I have read technical release 01/10 and while I agree in principle with its aims in respect of external landlords. I do believe that it is excessive in respect of blocks where the freehold is held by the management company and every flat owner has a share in that management company and therefore a say. Even in the case where the flat owners have a share in the management company and that company does not own the freehold itself and no interest other than the ground rent is taken by the freeholder, the technical release would seem excessive.

In the past the situations referred to above have been adequately managed by preparing all the accounts via the management company on terms of the lease.

- 1. The detailed profit and loss account with modification at the bottom can double as service charge account.
- Income can be taken by the management company to match the service charge expenses and any shortfall or over payment of service charges against cost is reflected in the balance sheet.
- Any bank interest or other income can be either used to reduce service costs or held
 in the profit and loss account for future expenditure. This can be drawn down in
 future by waiving a service charge shortfall claim and making a loss in the profit
 and loss account.

As the above can be achieved the reason for the basis of accounting reflected in technical release 01/10 seems to be based on the fact that the Landlord and Tenant Act 1987 requires services charges to be held in trust.

If there is no need for the trust the above simpler accounting format which also does not require the notification of a trust to HM Revenue & Customs could apply.

- a) The trust itself being discretionary requires tax at 50% if income is over the £1,000 standard rate band. It also needs a special tax return completing.
- b) Separate trust bank accounts are required and need to be managed.



The above two extra costs, seem to be unnecessary for a group of people who only wish to share the joint cost of their property. I believe that the Landlord and Tenant Act 1987 does not apply to these cases for the following reason.

- 1. Section 42 does not apply to exempt landlords. As per section 58.1 landlord and Tennant Act 1987.
- 2. In this section subsection (g) states the following:
 - "An exempt landlord is a registered social landlord or a fully mutual housing association which is not a registered social landlord."
- 3. In most of the member owned flat management companies all the income is mutual with the exception of a little bank interest or possibly some rental income derived from surplus property let on a six month lease. This income is generally then reintroduced into the service charge to reduce monies demanded from flat owners on an annual basis or when major works undertaken.
- 4. The Housing Association Act 1985 part (1) para (1) defines a housing association as a society, body of trustees or company.
 - (a) Which is established for the purpose of, or amongst whose object or powers are included those of, providing, constructing, improving or managing or, facilitating, or encouraging the construction or improvement of housing association and.
 - (b) Which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such a rate as may be prescribed by the Treasury.

The Housing Association Act 1985 part (1) para (2) refers to

Fully mutual in relation a housing association means the rules of the housing association shall:

- (a) Restrict membership to persons who are tenants or prospective tenants of the association.
- (b) Precludes the granting or assignment of tenancies to persons other than members.

Most of the leases of this type of company have restriction in them similar to the above and if not a company could easily by changing its articles reflect the necessary rules.

The above would make many of these company's fully mutual housing associations, which although not being a registered social landlord are exempt from section 42.

This being the case there is no need to hold the funds in trust and there for they are not covered by the technical release.

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Yours faithfully,