frettens
SOLICITORS

A Guide for

Directors of a Freehold Management Company

As a director of a freehold management company (whether limited by shares or by guarantee), you must:

- Comply with your duties as a director under the Companies Act 2006
- Follow the company's rules, shown in its articles of association
- Keep company records and report changes
- File your accounts and your Company Tax Return
- Pay Corporation Tax (if applicable)
- Register for Self-Assessment and send a personal Self-Assessment tax return every year (if you don't get any pay or benefits, there will be no need to do this).

You can hire other people to manage some of these things day-to-day (for example, an accountant or managing agent) but you're still legally responsible for your company's records, accounts and performance.

Complying with your obligations as a director

A director's general duties are owed to the company and not to individual shareholders. The Act sets out certain key duties, as follows:

1. Duty to act within a director's powers
2. Duty to promote the success of the company
3. Duty to exercise independent judgment
4. Duty to exercise reasonable care, skill and diligence
5. Duty to avoid conflicts of interest
6. Duty not to accept benefits from third parties (i.e. bribes)
7. Duty to declare interest in proposed transactions or arrangements (i.e. you must tell the other shareholders if you might personally benefit from a transaction the company makes)

Other, non-statutory duties which a director may owe to a company include a duty of confidentiality.

Acting in accordance with the company's articles of association

The Articles of Association are one of the constitutional documents of a company which set out the basic management and administrative structure of the company. They regulate the internal affairs of the company including, for example, the issue and transfer of shares, board and shareholder meetings, powers and duties of directors, dividends, borrowing powers and so on. The Articles are a public document open to inspection at Companies House. They create a contract between the company and each of its shareholders.

Keeping company records

You must keep records about the company itself and financial and accounting records. HMRC may check your records to make sure you're paying the right amount of tax, where applicable.

1. Records about the company

You must keep details of:

- directors, shareholders and company secretaries
- the results of any shareholder votes and resolutions
- promises for the company to repay loans at a specific date in the future ('debentures') and who they must be paid back to
- promises the company makes for payments if something goes wrong and it's the company's fault ('indemnities')
- transactions when someone buys shares in the company
- loans or mortgages secured against the company's assets

You must tell Companies House if you keep the records somewhere other than the company's registered office address.

2. Register of 'people with significant control'

You must also keep a register of 'people with significant control' (PSC). Your PSC register must include details of anyone who:

- has more than 25% shares or voting rights in your company
- can appoint or remove a majority of directors
- can influence or control your company or trust

You still need to keep a record if there are no people with significant control.

3. Accounting records

You must keep accounting records that include:

- all money received and spent by the company
- details of assets owned by the company
- debts the company owes or is owed

You must also keep any other financial records, information and calculations you need to prepare and file your annual accounts and Company Tax Return. This includes records of:

- all money spent by the company, for example receipts, petty cash books, orders and delivery notes
- any other relevant documents, for example bank statements and correspondence

You can be fined by HMRC or disqualified as a company director if you don't keep accounting records

4. How long to keep records

You must keep records for 6 years from the end of the last company financial year they relate to, or longer if:

- they show a transaction that covers more than one of the company's accounting periods
- the company has bought something that it expects to last more than 6 years, like equipment or machinery (although this may not apply in the case of managing freehold)
- you sent your Company Tax Return late
- HMRC has started a compliance check into your Company Tax Return

Further information and assistance

If we can help you with further information, please contact one of the team listed below:

Karen Edwards
Commercial Solicitor & Associate
01202 499255
kedwards@frettens.co.uk

Niki Adkins
Leasehold Specialist
01202 499255
nadkins@frettens.co.uk