

The breadth and scope of those various sources of reference underline the importance of the commonhold being administered either by professional directors who are thoroughly versed in the legislative background of commonhold, or by member-directors who are prepared to sacrifice the time to learn the rules thoroughly themselves (see Section 8.9 below). That task will be made easier by the fact that, in practice, the main operational rules are to be found in the memorandum and articles of association of the commonhold association, on the one hand, and the commonhold community statement, on the other.

8.3.2 The memorandum and articles of association

These two documents form the constitution of the commonhold association. The memorandum describes the essential attributes of the commonhold association and its relationship with the outside world. The articles of association regulate the internal organisation and affairs of the commonhold association. They determine how the powers conferred on the commonhold association by the memorandum of association shall be exercised, and set out the detail of such matters as voting requirements and meeting procedure.

The content of both documents is largely prescribed by regulations made under the Act, and is standard for all commonhold associations, save for a specified range of matters where the members are allowed a free hand to decide their own procedures to suit their convenience.

A more detailed explanation of the memorandum and articles of association is provided in Part 1 of Chapter 4 of this work.

8.3.3 The commonhold community statement

The commonhold community statement is a document created by regulations made under the Act. It sets out the management framework and the rules of the commonhold including the rights and duties of the unit-holders and of the commonhold association. It will be the most important source of reference for the commonhold association as it manages the commonhold.

The commonhold community statement is not entirely comprehensive and must be read in conjunction with the memorandum and articles of association and with the registers of the common parts and unit titles. In the event of any conflict between the memorandum and articles and the commonhold community statement, the provisions of the memorandum and articles will prevail.

A more detailed explanation of the content and effect of the commonhold community statement is provided in Chapter 4 of this work.

8.3.4 Knowing the rules

Quite apart from the fact that a director of a commonhold association should be expected to know the rules which inform him how to govern the company with

which he has been entrusted, there are a number of practical considerations which underline the need for thorough familiarity:

(a) Knowledge of the rules will prevent mistakes arising in the conduct of applications by unit-holders, for example for permission to install satellite dishes, or keep animals. If such activities are prohibited, but the directors allow them in the mistaken belief that they are permitted, then problems are likely to arise in the future once the true position is revealed.

(b) Knowledge of the rules will lead to greater efficiency in dealing with administration.

(c) It is safe to assume that one or more members of the commonhold will acquire a thorough knowledge of the rules. If this knowledge is not matched by the directors, this may lead to a loss of confidence by the members in the directors, with unfortunate results.

Greater indulgence towards the directors is of course to be expected in the case of small commonholds, where the directors will in practice be indistinguishable from the members. Familiarity with fellow members should not, however, be used as an excuse for failure to get to grips with the elements of the commonhold community statement and the memorandum and articles of association. Experience of similar systems abroad shows that it is when a commonhold is run in loose disregard of the rules that it is at its most vulnerable, with years of expensive litigation the predictable outcome.

8.4 RECORD KEEPING

8.4.1 Introduction

In addition to the records which the commonhold association is bound to keep because of the mandatory requirements discussed in Section 4.4 of the text, prudent commonhold associations will also keep careful records of the following:

(a) Copies of all consents and other documents sent to unit-holders recording matters relating to the operation of the commonhold.

(b) Correspondence with unit-holders.

(c) Documents generated during the course of building works.

(d) Copies of notices and other documents generated during the course of disputes.

The grounds underlying this principle are straightforward. First, while the Minutes Book will show what decisions have been taken, the reasons will rarely be apparent. It will be important to show new members who may be unfamiliar with the past that the decision currently confronting them has been made for the same