

Property management companies: directors' duties and responsibilities

Property management companies are typically very different to general commercial companies as they do not trade. However, the duties and responsibilities relevant to directors of trading companies in the UK apply equally to property management companies.

The aim of this Guide is to remind you of the duties and responsibilities which you have as a result of your position as a director of a property management company

Duties owed by directors

Directors are responsible for carrying on the affairs of the property management company (the **PMC**) and exercising its powers. Your primary responsibility is to the PMC itself (viewed from the point of view of its members as a whole) but you also have obligations to your fellow directors and any creditors of the PMC.

The duties owed by directors to their companies have evolved through case law, and are known as common law and fiduciary duties. Many of these have now been codified under the Companies Act 2006. The current position is that your duties as a director are a combination of statutory and common law duties.

The general duties

- To act within your powers by acting in accordance with the PMC's constitution and only exercising powers for their proper purpose.
- To promote the success of the PMC for the benefit of its members as a whole. In fulfilling this duty you must have regard (among other matters) to:

- a the likely consequences of any decision in the long term;
- b the impact of your company's operations on the community and the environment; and
- c the need to act fairly as between the members of your company.

- To exercise independent judgment.
- To exercise reasonable care, skill and diligence.
- To avoid conflicts of interest.
- Not to accept benefits from third parties.
- To declare an interest in a proposed transaction or arrangement.

Filing duties

Directors are responsible for complying with requirements to file various documents at Companies House, such as annual accounts (even if the company does not trade), confirmation statements, certain shareholder or member resolutions and various other forms (most of which are available on the Companies House website). A director may be liable for a fine if he fails to file appropriate documents at Companies House.

Fraudulent trading

In the course of the winding up of the PMC, if it appears that any business of the PMC has been carried on with the intent to defraud creditors, or for any other fraudulent purpose, the liquidator can seek a court declaration that anyone who was knowingly party to the fraudulent business make a contribution to the PMC's assets. This is known as fraudulent trading.

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It is not only directors who may be liable for fraudulent trading. Anyone who is knowingly party to carrying on the business with intent to defraud may be liable.

Fraudulent trading is a criminal offence.

Wrongful trading

On the application of a liquidator, the court may require a contribution to the assets of a PMC from a person who is or was director.

This can happen where:

- the PMC has gone into insolvent liquidation;
- at some point before the commencement of the winding up of the PMC, that person knew or ought to have concluded that there was no reasonable prospect that the PMC would avoid going into such insolvent liquidation; and
- that person was a director of the PMC at the time.

This is known as wrongful trading.

It must be shown that the PMC is worse off as a result of the continuation of trading.

The court will not make an order for wrongful trading if the director took every step with a view to minimising the potential loss to the PMC's creditors as he ought to have taken, if the director knew it was unavoidable that the PMC would go into liquidation.

It is easier for a liquidator to prove wrongful trading than fraudulent trading, because there is no requirement to show dishonesty.

Only directors can be found liable for wrongful trading.

It is crucial that the directors hold regular full board meetings and that the commercial decisions are reported in full in the minutes.

Directors must also ensure that they have up-to-date financial information at all times.

Consequences of a breach of duty

A breach of one or more of the duties owed as a director can result in the termination of the director's appointment or disqualification as a director.

Court proceedings may also be issued for an appropriate remedy, which may include damages, an injunction preventing the director from taking further action, an order setting aside the transaction and giving restitution, and an account of profits or restoration of any company property held by the director.

In some cases breach of the duties could lead criminal liability, resulting in fines, or imprisonment.

You should therefore:

- ensure that you are aware of your duties and responsibilities;
- ensure that the company's management and others involved in governance are also aware of the duties of directors, in particular the duty to promote the success of the PMC;
- ensure that board minutes and similar documents refer to the duty to promote the success of the PMC and, where relevant, to the listed factors; and

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- familiarise yourself with the constitution of the PMC, in particular any limitations on the powers of the PMC or the directors.

For further information, please refer to your usual contact at Thomson Snell & Passmore. Alternatively, please contact the author, Joseph Hartland, a solicitor in our Corporate and Commercial team, on 01892 510000 or email at:

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This information sheet is not intended to be comprehensive or to provide legal advice, which should be sought on particular matters. It is based on the law applicable at March 2019.

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