

TSEM5750 - Trusts for Particular Purposes: Flat Management Companies - funds not within S42 LTA 1987

Where a fund exists but it is not within Section 42 LTA 1987, for example where freehold owners of property decide to create a sinking fund, or because the landlord is an RSL or other 'exempt landlord', then the treatment of that fund will depend on what structure is used.

- **An individual holds the funds.** The individual could be an employee, trading as a maintenance contractor or could hold funds as trustee for the freeholders. If the latter then the sort of trust depends on the terms of the trust, not on Section 42 LTA 1987.
- **A company holds the funds.** Assuming the company was formed to hold funds for the freeholders who created it, then it could hold the funds as trustee. Alternatively it could trade as a flat management company receiving payments under a contractual arrangement to supply services and pay corporation tax. The status of the fund will depend on the terms under which the payments are made and the terms under which the company holds the funds.
- **A trust holds the funds.** It could be any sort of trust depending on the terms of the deed but it would not be within Section 42 LTA 1987.
- **An unincorporated association holds the funds.** This could, for example, be a residents' association. It would be liable to corporation tax unless it was acting as a trustee. Again any trust would not be within Section 42 LTA 1987.

Any funds that the trustees held would be subject to the normal trust rules. It is possible for the funds to be held under a bare trust, interest in possession trust, discretionary trust or accumulation trust arrangement. The exact status will depend on the terms and nature of the trust agreement.