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Property Management Services

How to serve a 'special notice' under Companies Act 2006 Section 168 to Remove Inadequate Directors from Controlling an RTM Company

In the realm of Right to Manage (RTM) companies, which play a pivotal role in the management of certain leasehold properties, it might sometimes be necessary to replace directors who are not acting in the best interests of the company. One of the procedures to achieve this is through a "Special Notice" (under Companies Act 2006 Section 168). Here's a step-by-step guide on how to service such a notice:

Understand the Grounds for Removal: Before taking action, it's crucial to ensure there are valid reasons for removing a director. Common grounds include breach of fiduciary duties, persistent failure to attend board meetings, or actions detrimental to the company's best interests.

Call a General Meeting: According to Section 168, directors can be removed by an ordinary resolution (meaning a majority of the votes cast) at a general meeting. This means shareholders will need to convene and decide on the matter.

Service of Notice: Any member of the RTM company can propose the removal of a director by serving a special notice of their intention to the company. This notice should be served at least 28 days before the meeting where the resolution will be discussed.

Inform the Director: Once the company receives the notice, it should, as soon as possible, forward a copy to the director in question. The director has the right to be heard on the resolution at the meeting. They can also make written representations (if they're not given the opportunity to voice them at the meeting) and request that these be sent to the members.

Holding the Meeting: At the general meeting, both sides – those proposing the removal and the director in question – should be given the opportunity to present their case. This might involve discussing the reasons for the proposed removal, addressing any concerns, and clarifying any ambiguities.

Voting: After the matter has been discussed, a vote will be taken. If a simple majority of those voting (either in person or by proxy) favour the director's removal, the director will be removed from office with immediate effect, unless the company's articles of association stipulate otherwise.

Updating the Records: After the removal, ensure that all relevant records and registers, including the register of directors, are updated accordingly. It's also mandatory to notify the Registrar of Companies of the change via the appropriate forms within 14 days.

Replacement: Depending on the articles of the RTM company, the remaining directors might be able to appoint a replacement. If not, a separate resolution might be required to elect a new director.

Legal Considerations: It's important to remember that removing a director might have legal implications. The director could claim unfair dismissal or breach of contract, for example. Hence, it's always a good idea to seek legal advice before and during the process.

Conclusion:

The procedure to remove an ineffective director from an RTM company through a Section 168 notice ensures that shareholders maintain control over the company's governance. However, it's a sensitive process and must be executed with care, transparency, and due consideration of legalities. Always consult with a legal expert to ensure that you navigate the intricacies of the process correctly.

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