

# Legal Alert

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## RICS Code of Practice for Service Charges in Commercial Property

The Royal Institution of Chartered Surveyors has published a Code of Practice for Service Charges in Commercial Property ("the Code"), which comes into effect on 1 April 2007 in England and Wales.

The Code replaces the previous "Service Charges in Commercial Property: A Guide to Good Practice". The advice in the Code is intended to represent best practice. Practitioners are not obliged to follow the recommendations, but should be aware of them.

### An overview the Code

The main themes of the Code are **transparency and communication** between the relevant parties, and it is hoped that this will help to prevent disputes from arising.

Some of the more significant recommendations of the Code are as follows:

- A timetable has been set for the provision of service charge budgets (1 month prior to the start of the service charge year) and certified accounts (within 4 months of the end of the service charge year).
- Tenants should be given a reasonable period (4 months from issue) in which to raise enquiries in respect of the certified accounts. The lease should provide for Alternative Dispute Resolution to be used if necessary.
- Service charges should be "**not for profit, not for loss**" i.e. the costs recovered should only be sufficient to cover the costs that have been expended and are properly recoverable from tenants. In particular:
  - Landlords should not seek to recover the cost of refurbishment (as opposed to maintenance / repair) of the building. Service Charge should not include initial design/construction costs.
  - Management fees should be reasonable, transparent and should not be linked to a percentage of the expenditure, as has previously been common.
  - Service charges should not include costs that are matters between the landlord and an individual occupier (such as costs of lettings, rent reviews etc), or costs attributable to unlet premises or special concessions given to a particular tenant.
  - Service charge payments should be kept in a separate identified account. Interest earned can then be easily tracked and credited to the account.
- The owner is to ensure that the services provided represent value for money, and that regular reviews of the quality and cost of the services are undertaken.

### Applying the Code

The Code is voluntary, it does not have legal force. The RICS wants new leases to include service charge provisions that are consistent with the principles of the Code. The service charge provisions in existing leases should also be interpreted as far as possible in line with the Code, unless the lease provisions prevent this. At lease renewal, the opportunity to modernise the service charge provisions in the new lease should also be taken.

Landlords will need to decide if they want their leases to be Code compliant. Amendments will be required to standard leases to refer to the Code if landlords accept all its terms.

The Code represents a change in approach, and landlords may be reluctant to accept all of its principles. The RICS anticipates, however, that applying the Code will become common practice, and that this should lead to fewer disputes and improved landlord and tenant relationships.

**For further details please contact either Roger Thornton or Kate Amos**

