

# Legal Agreements with Landlords



**GUIDANCE NOTE**

# ***RDA UK Guidance for RDA Groups on Legal Agreements with Landlords***

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**This guidance note does not replace the need to seek professional legal advice in the drawing up of any formal agreement and Groups should seek such advice before entering into any legal agreement.**

### **Acknowledgement**

This guidance note has been prepared with the assistance of a working group comprising RDA UK volunteers and the charity's solicitors VWV.

**If you have any feedback on the content of these resources, please contact the Group Support Team at RDA National Office: 01926 492915**

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## Part 1: Overview

**1.1. Introduction.** Each RDA group (**Group**) is an individual charity in its own right governed by a board of charity trustees (**Trustees**) in accordance with requirements set out by the relevant regulatory bodies, including the Charity Commission, the Health and Safety Executive, the Information Commissioner's Office and many more. Depending on a Group's circumstances and organisation it may from time to time have to enter into various agreements. This is especially the case where Groups are based at a location owned by another person or organisation. It is the responsibility of the Group's Trustees to ensure that such agreements are legally binding, clear, and protect the interests of the Group. The Trustees must ensure that the agreements their Group enters support the overall aim of RDA UK, namely to facilitate riding and carriage driving for disabled people. They must also ensure the protection and efficient use of RDA funds in the promotion of public benefit.

**1.2. Purpose.** This guidance is primarily aimed at Trustees of groups that pay to use facilities such as land, buildings, equipment, or any other related service provided by a local individual or business (referred to below as a **landlord** though not all such relationships will meet the legal definition of a landlord). This will include all Groups based at riding schools and centres or any other facility that is not owned entirely by the group itself. **This guidance does not replace the need to seek professional legal advice in the drawing up of any formal agreement and Groups should seek such advice before entering into any legal agreement.**

**1.3. Requirements.** It is essential that any substantial agreement with a landlord that involves payment, regular or otherwise, or any other consideration for any of the facilities or services mentioned above is protected within a legally constituted agreement. Not to do so involves a higher level of risk to the Group and possibly to the landlord as well. Before entering into any legal agreement with a landlord Trustees must be clear on what they are attempting to achieve on behalf of the Group and its riders/drivers. To that end they must be aware of the various legal agreements available, and which would best suit their Group's circumstances having first carefully considered what specific requirements should be included in the agreement. The landlord will also have requirements that will have to be reflected in the agreement, so Trustees must have a clear understanding of what those requirements are and their compatibility or otherwise with the Group's objectives and legal obligations as a charity. At some point Trustees will have to negotiate and agree with the landlord what goes into the agreement. It is therefore imperative that Trustees have or acquire the knowledge and skills necessary to carry out this part of the process, which will culminate in the production of "Heads of Terms".

**1.4. Heads of Terms.** This is a document jointly agreed by the Group and the landlord setting out in plain language the key terms they wish to see in an agreement. This is then translated into a more detailed legal agreement for both sides to consider with their respective legal advisers before it is finally agreed and signed.

**1.5. Issues to consider.** As its name suggests, RDA UK operates throughout the United Kingdom and there are RDA Groups in England, Wales, Scotland and Northern Ireland. So,

variations in law and legal process between the four nations need to be taken into account. In addition there is a high level of variability in the organisation, operation and circumstances of Groups throughout the RDA family - and that means that the type of guidance Groups need is equally variable. A guidance note such as this one is inevitably general in nature and cannot address the particular needs of every Group. Trustees, having read this guidance and taken the appropriate advice, must satisfy themselves that any agreement meets all their requirements before it is signed. The grant or renewal of RDA UK membership or access to RDA central funding may depend on confirmation from Trustees that suitable agreements are in place. However it is acknowledged that some Groups will have already entered into agreements with their landlords and/or service providers. The nature of those agreements will vary - some will be both legally binding and comprehensive, others will be inadequate. Some of these arrangements will have been long standing and there may be reluctance on the landlord's part to enter into a new, perhaps more detailed, agreement. Where a Group's landlord is reluctant to enter into a new agreement, the Trustees are advised to carry out an assessment of their current arrangements, seeking legal advice where appropriate, and seek to mitigate any risks associated with the existing agreement.

**1.6. Risks.** Groups that do not have suitable legal agreements covering the circumstances outlined above are at a higher level of risk. The following are some examples of the potential risks of running a Group without a suitable legal agreement:

- Termination without notice by a landlord, leaving the Group without a base to operate from.
- No protection for assets the Group stores in the premises.
- No compensation where a Group is required to leave premises after infrastructure or other projects have been funded, in full or in part, by a Group.
- Decisions taken about a Group's horses without prior notification.
- The risk of a Group's insurance cover being invalidated due to a failure to comply with policy conditions.
- Difficulty ensuring compliance with safeguarding requirements.
- Unilateral changes to the space or times allocated for the Group's use of facilities without consultation.
- Unexpected claims for compensation for damage, wear and tear, etc.
- Undue pressure for funding of projects that do not benefit the Group. Conflicts of interest, especially if the landlord - or someone connected to the landlord - is a Trustee or holds another official role or office in the Group.

**This is not an exhaustive list.**

## **Part 2: Types of legal agreement and their purpose**

There are three main types of legal arrangement that will be of interest to Groups:

### **2.1 Lease**

A lease is used where a Group (the tenant) is granted exclusive possession of a property and can therefore exclude all others from using that property for the duration (term) of the lease. A lease can be for the whole of a property or just part of it. An example would be where a landlord wishes to grant a lease of a riding arena with ancillary outbuildings and a Group wishes to occupy the property and use it as a riding school.

A lease can allow for the tenant to share the property. In the example above, the Group could be permitted to allow other riding groups to use the arena either with or without the consent of the Landlord.

### **2.2. Licence**

A licence is used where a Group (the licensee) enters into an agreement with an owner (licensor) under which the Group may use a property for a specific period of time, usually for designated hours of use for a specific licence fee. No relationship of landlord and tenant will arise. The owner/licensor can continue to use the property alongside the Group and the licensee will not have exclusive use of the property. An example would be where a Group wishes to use a riding arena for certain hours a week and at other times the owner will have similar arrangements with other user groups.

### **2.3 Livery Agreement**

A livery agreement is used for the stabling requirements of horses. This type of agreement can be amended to suit a whole spectrum of specific circumstances and include grazing, feeding, grooming, exercise if the parties can negotiate terms. Livery operators commonly have their own form of Livery Agreement that they have used for many years and are unwilling to depart too far from their standard wording. Although a side letter could be used to insert additional terms for the use of particular facilities or the provision of services.

## Part 3: Heads of Terms (HoTS) for various scenarios

**3.1. General.** Given that RDA Groups have many different models of operation and there are differences in law between the four nations the following scenarios are necessarily generic. Their purpose is to act as a guide on the issues to be considered when developing HoTS with a landlord/property owner. Groups are advised to make clear when negotiating that HoTS are not intended to be legally binding and to instruct an appropriately qualified surveyor or other property professional to conduct such negotiations if there is no one with the necessary skills, knowledge and experience among the Group's Trustees, other volunteers, or supporters. The Trustees should also seek legal advice from an appropriately experienced lawyer once negotiations have taken place to ensure that all relevant points have been covered before HoTS are incorporated into a legally binding agreement.

The generic group scenarios are:

**3.1.1. All facilities wholly owned and operated by the RDA Group.** (No agreement required.)

**3.1.2. Some or all facilities owned by a landlord who has an official role or holds a position on the Group's board of Trustees** (Conflict of interest issues arise here - and should be considered in addition to the property issues referred to below.)

**3.1.3. Some or all facilities owned by a landlord who has no RDA role**

[Link to Licence HoTS](#)

**3.1.4. Some or all facilities owned by another Group**

**3.1.5. Groups requiring livery services, occasional use of facilities, grazing, etc**

**3.1.6. Groups requiring exclusive use of facilities**

[Link to Lease HoTS](#)

[Link to Livery Agreement HoTS](#)

**3.1.7. Two or more groups sharing facilities**

**3.1.8. Groups seeking to invest RDA or other public funding in a landlord's facilities** (Compensation/depreciation/maintenance issues)

[Link to Draft Precedent HoTS](#)

## **Investing in the Improvement of Your Riding Centre or Other Property**

Many RDA Groups collaborate with their landlords to improve the stables, riding centre or other venue from which they operate. This can help create an excellent working environment for an RDA Group. However, in order to fulfil their duties as charity trustees Group trustees must ensure that the investment made by the Group will achieve the aims of the Group and appropriate steps are taken to safeguard the investment made.

Things can go wrong where a Group and its landlord fail to consider the need to safeguard the Group's investment - or rely on their existing working relationship and informal agreements rather than seeking professional advice. On occasion, this has led to situations where the Group has invested considerable sums in a Centre only to discover that the landlord moves on - and the Centre is no longer available for use by the Group.

### **Issues to consider when investing in your riding centre**

- You should consider entering into a partnership agreement, charge, or overage agreement when considering a substantial investment into a property that your Group does not own. The form such agreements should take is beyond the scope of this note. Please refer to the sources of further information at the end.
- Consider the term of the lease against the term of the funding arrangement - the lease should generally last at least as long as the funding agreement will last - and some funders may expect the lease to last considerably longer to ensure that the Group is able to get good value out of the investment being made.
- Which party will undertake the works - and how you will ensure that the works should be to a standard that is satisfactory to both parties?
- What is to happen to the investment facility should RDA breach the lease and the landlord forfeit the lease as a consequence - should there be a depreciation agreement to address this possibility?
- What is to happen to the investment at the end of the term of the lease or if RDA exercises a break option to exit the property - should there be a depreciation agreement?
- Who will insure the premises - and if it is damaged, will the investment of the Group be protected?
- Who will repair and maintain the premises?

- Should there be a rent reduction for the Group to recognise that it has improved the facilities, in ways that other user groups may benefit from?
- Should any additional facilities created with funding from the Group be restricted to use by the Group?
- The property could be sold to a new owner - have the arrangements been documented to protect the Group if that happens?

## **ABOUT RDA**

### **Enriching lives through horses**

At Riding for the Disabled Association (RDA), our horses benefit the lives of thousands of disabled children and adults. With fun activities like riding and carriage driving, we provide therapy, fitness, skills development and opportunities for achievement – all supported by a network of amazing volunteers and qualified coaches at RDA centres all over the UK.

RDA is an inclusive and diverse organisation. We welcome clients with physical and learning disabilities and autism, and there are no age restrictions. Through our network of member groups, RDA is at work in every corner of the UK, in our cities and remote rural areas, bringing the therapy, achievement and fun of horses to as many people as we can.

We are a charity, and we can only carry out our life-changing activities thanks to the generosity of our donors, the dedication of our volunteers and the good nature of our fantastic horses.

The RDA UK Legal Advice Line for RDA Groups is provided by RDA's retained Legal Adviser Shivaji Shiva and his colleagues in the specialist charities team at law firm VWV:

**RDA Legal Advice Line: 07788 313298 | [sshiva@vww.co.uk](mailto:sshiva@vww.co.uk)**