



national consumer agency
gníomhaireacht náisiúnta tomhaltóirí

putting consumers first



BUYING AND LIVING IN A **Multi-Unit Development Property in Ireland**

National Consumer Agency

Who are we?

The National Consumer Agency is an independent national agency that was established by the Irish government under the Consumer Protection Act 2007.

Our activities incorporate the work that was previously done by the Office of the Director of Consumer Affairs (ODCA). We also have additional areas of focus, which are outlined below, and we have extensive new powers. Among other things, these powers allow us to deal with unfair, misleading or aggressive commercial practices.

What do we do?

Our aim is to provide strong and modern consumer protection, safeguarding consumers in Ireland and empowering them to understand and to exercise their rights.

To achieve our aim, we:

inform consumers of their rights through consumer information;

promote a strong consumer culture in Ireland through consumer **education and awareness**;

help businesses obey consumer law through our **enforcement** activities; and

represent consumer interests at all levels of local and national consumer policy development **through targeted research** and **forceful advocacy**.

Our consumer website, www.consumerconnect.ie, provides a broad range of consumer-related information, news, top tips and an email enquiry service. If you can't find what you are looking for on our website, ring our friendly and helpful advisors on **LoCall 1890 432 432**.

Our corporate website, www.nca.ie, helps businesses understand their obligations. It also provides useful references for the media and researchers. Further information is available in our leaflet *A Guide To The National Consumer Agency*.



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FOREWORD

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This Guide is intended for anyone who is thinking of buying, or has bought, a property unit such as an apartment in a multi-unit development. The term “multi-unit development” is used to describe a building or a group of buildings comprising multiple residential properties that share certain physical areas, such as car parks, entrance halls and gardens; and certain services, such as security, plumbing, lifts and waste disposal. Buying and living in a multi-unit development is different to buying and living in a traditional house, both from a legal and practical perspective. This Guide is intended to explain the main characteristics of multi-unit development life and assist consumers in understanding these differences.

Through the work of the Multi-Unit Development Forum, the National Consumer Agency has developed this Guide to highlight the key issues which might be considered with regard to multi-unit development living. The Agency wishes to thank the Forum participants for their assistance in developing this Guide.

The Guide draws on previous work by the Agency in this area, consumer correspondence on multi-unit developments and management companies and existing sources of information in the public domain, in particular, material published by the Office of the Director of Corporate Enforcement, the Companies Registration Office, Dublin City Council and the Department of the Environment Heritage and Local Government. The Multi-Unit Development Stakeholder Forum and the National Consumer Agency wish to acknowledge the valuable work of these bodies in this area.

It is understood by the Agency that arrangements for the regulation of property service providers will be formalised

under the auspices of the National Property Services Regulatory Authority (NPSRA). The Bill providing for the statutory establishment of this Authority is expected to be published by the Government in 2008. The content of this Guide is subject to any specific requirements that may be introduced or revised by the NPSRA or any other relevant statutory body.

The Guide is presented for information purposes only and does not constitute financial, legal or professional advice. It does not represent an invitation or inducement to engage in investment activity, or enter into any type of contractual arrangement. Neither does it advise on the merits of, or recommend, any particular product, service or provider. It is intended as an outline of the subject matter only. The guide may not address the specific circumstances of a particular individual or development. Consumers should check any issues it raises with the relevant professionals or statutory bodies where appropriate.

While every effort has been made to ensure that the information provided is accurate, the National Consumer Agency assumes no responsibility or liability arising from any errors or omissions. In particular, to ensure that the terms and conditions of the contract to purchase a property adequately safeguard their interests consumers should always consider seeking independent legal advice and satisfy themselves that they understand the terms and conditions of contract before entering into a contract to purchase a property.

It should be noted that each chapter of this Guide is intended to be read on an individual basis, therefore there is some repetition throughout.

National Consumer Agency
September 2008

Introduction

This Guide supplements the National Consumer Agency information booklet 'Property Management Companies and You' by providing more comprehensive information on some of the key aspects of multi-unit development living and management company administration. The primary aim of this Guide is to help consumers better understand their rights and responsibilities when buying and living in multi-unit developments.

Please note the NCA does not have a legislative or regulatory function in this area. Unless the consumer complaint is in relation to a breach of consumer law the Agency is not in a position to intervene and advise on individual property matters. In summary, the Guide is structured as follows:

Section 1 & 2

Introduce and highlight some of the key terms and concepts which may arise when buying into a multi-unit development and provides an outline of some of the key legal terms and issues in relation to buying a unit;

Sections 3-6

Outline the principle issues involved in living in a multi-unit development; management companies, service charges, sinking funds, managing agents and house rules;

Sections 7 & 8

Outline some of the key functions of developers, their role and the issue of property snagging;

Sections 9-13

Outline the role, responsibilities and administration of management companies, particularly in relation to their obligations under company law;

Sections 14 & 15

Set out some issues which management companies should have regard to in terms of the administration of their budgets and banking arrangements;

Sections 16 & 17

Provide information on insurance and fire safety and set out related considerations for management companies and persons living in multi-unit developments.

There are also 4 appendices which set out contact details for State bodies, a glossary of key terms and a code of practice for developers who are members of the Irish Home Builders Association and documents to facilitate the administration of management companies.

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Section 1 & 2

1. Multi-Unit Development Unit Property
2. Buying A Unit

1

Multi-Unit Development Property

1.1 Introduction

The term “multi-unit development” is used in this Guide to describe a form of residential accommodation in which individual property “units” share a range of facilities, known as common areas. Common areas may include:

- » Entrance doors/lobby areas;
- » Car parking;
- » Stairwells/lifts;
- » Garden or recreational areas;

Unit owners may also share and/or access certain services on a communal basis, for example:

- » Waste disposal;
- » Security services;
- » Cleaning and maintenance contracts.

A multi-unit development may be one of a variety of dwelling types such as a house, an apartment or duplex. In a traditional stand-alone house, the facilities and services or areas such as those referred to above are maintained by the individual property owner, or where applicable, the local authority. In a multi-unit development, they are owned and maintained by the unit owners on a communal basis. This is because all owners share, use and own the common areas, for example halls, gardens and parking with other units. Unit owners pay an annual fee known as a service charge

to pay for the maintenance of these common areas and other shared services such as cleaning and waste disposal. Service charges are explained in greater detail in Section 3.

When you purchase a unit in a multi-unit development, you purchase both your individual property and a share of the ownership of the common areas. You therefore enjoy two legal interests: one, as the owner of your individual unit and second, as a part owner of the common areas.

At the outset, if you are considering buying a new unit always ask your solicitor if the planning permission for the unit you are buying requires that a management company be set up. If the unit you are buying is in an established development ask the estate agent if a management company is in place.

1.2 Management companies

It is most common in Ireland for multi-unit development ownership to be structured in the form of a company, usually called a management company. A company is a form of business organisation which is a separate legal entity and distinct from the people who run it. While there is no legal obligation to set up a management company, management companies are generally formed to manage multi-unit developments because they can be an efficient means of management and the rules of company law (which they must adhere to) offer an effective structure in terms of administration and ownership.

The management company is established for two key purposes:

1. To be the legal owner of the unit and common area leaseholds;
2. To manage and maintain the common areas.

In new developments the developer generally establishes the management company at the outset, often before the first unit is sold. (In this Guide the term developer is used to refer to persons or companies who build, own and sell multi-unit developments).

As units are sold, each purchaser becomes a member of the management company on completion of their purchase transaction and receipt of certificate of membership. For example, if 50 apartments are sold, there will be 50 members of the management company.

Typically, when the developer completes the development and transfers his ownership of the unit and common areas, the unit owners through management company become the legal owner of the common areas and responsible for their maintenance. The management company is ultimately intended to be the owners' company and act on their behalf. This means that you and your fellow owners should eventually be responsible for the upkeep not just of your own units, but all the common areas too. The value of your property and your quality of life are affected by how well the common areas are managed. All owners in a development should take part in their management company. This will help to make sure it is well run and works well to protect the value of your investment.

Although the company is owned and ultimately controlled by its members, they do not personally need to be involved in the administration of the company's day-to-day affairs. For example the members do not have to put their names to contracts entered into by the company. Companies appoint directors to do this work. When the management company is first established, the developer or some of their staff, associates or solicitor may fill these roles. Typically, when the developer has finished the development and transferred ownership of the common areas to the management company, these directors resign. At this point, owners as members of the management company volunteer to fill the role of directors of the management company. The role of company directors is explored in section 10.

1.3 Managing agents

Depending on the size of the development and the skills and time required to provide the services needed to maintain the common areas in a satisfactory condition, a management company may decide to employ a 'managing

agent' to manage and maintain the common areas on its behalf. Managing agents are firms who are contracted to administer, coordinate and provide management services such as the repair, maintenance, and insurance of the common areas on behalf of management companies.

Managing agents and management companies are two very different entities. The management company employs the managing agent firm and ultimately the agent is accountable to the management company for its actions. The role of managing agents is explored in section 6.

1.4 What should I look for when I first go to see the property?

1.4.1 What is the condition of the common areas?

It is important to check that the common areas, in particular, the following are well maintained and in good condition:

- » The entire building;
- » Gardens, grounds, courtyards and car park;
- » Waste collection point;
- » Lighting;
- » Entrance gate; and
- » Footpaths.

1.4.2 Is there a management company in place?

Does the sales brochure or contract refer to a management company or service charges? If you decide to buy, make sure your solicitor explains what the implications of having a management company in place are.

Amongst the key issues in this regard are the following:

- » What is the management company's registered name?
- » Who controls and runs the management company?
- » Have the common areas been handed over by the developer to the management company?
- » Who is the managing agent?



- » Is there a residents association? It may be wise to talk to an officer of the association to find out how well the residents, management company and agent work together.
- » Are residents in conflict with the management company (for example are they refusing to pay service charges)? If they are, the management company may eventually collapse and no services will be supplied.
- » What are the house rules and the rules on using common areas such as gardens, car parks and courtyards? Find out who can use what and when.

1.4.3 How good is the existing management company?

If you are buying in an established development, make sure there is a management company in place. At a minimum, the management company should have:

- » An active board of directors;
- » A service charge that provides for common area services; and
- » An adequate 'sinking fund' (See section 4).

Your solicitor should enquire when an AGM (annual general meeting) was last held and whether the annual returns and accounts have been filed.

1.4.4 What if the building needs a major overhaul?

Check when the last major overhaul of the complex was carried out. If no major refurbishment has been conducted for a number of years, there may be demands on owners to pay for this refurbishment. You may also need a structural survey carried out by a qualified construction professional before you put a bid on the property. It is important to get professional advice such as a chartered surveyor's report of the condition of your unit, its state of repair and details of any potential maintenance that will be required.

1.4.5 Is the building safe and secure?

Check that a valid Health and Safety Statement is clearly displayed. Find out when the last fire inspection was carried out and if there is a Health and Safety Officer in the management company. In particular, check that:

- » Fire exits are kept free and clearly marked;
- » Emergency vehicles have easy access; and
- » All lifts and gates are working.

Also check that the following are in place and ask if they are working:

- » A CCTV (closed circuit television);
- » Intercom;
- » Alarm system; and
- » A safe entrance.

2

Buying A Unit

2.1 Introduction

When purchasing a unit such as an apartment, the legal documents you sign set out the terms and conditions by which ownership of the unit is transferred to you. As the legal transfer of property is a complex and specialised process, in general, each party appoints a solicitor to represent them. There is no fixed rate for solicitors' fees, so shop around before picking a particular firm. Conveyancing describes the legal work done by the buyer's solicitor and the seller's solicitor in the property sale. If buying by auction, remember that you will also need a solicitor before the auction to check the contract and the properties title documents.

In conveyancing documents, the buyer is usually referred to as the Purchaser and the seller as the Vendor. The legal documents used to transfer ownership of the property set out the details of what the buyer and seller have agreed to do, the conditions governing this agreement and the remedies and consequences of either party not meeting the terms of the agreement. The contract to buy a unit will set out the terms and conditions of your ownership of your unit, your part ownership of the common areas and the conditions of your membership of the management company.

It is essential that you understand from the outset what these terms and conditions mean and what your rights and responsibilities are.

The documents you sign to purchase your property contain legally binding obligations and mean that you cannot "opt out" of any of the terms and conditions. For example, if the contract states that you will pay service charges and become a member of the management company, you cannot opt out of these obligations. It is therefore very important that you always ask your solicitor to examine and explain the terms and conditions of your individual contract, to ensure that you fully understand how they apply to your particular circumstances.

The following is a brief overview of some key conveyancing terms which purchasing a unit may raise. However, it is essential that you seek legal advice before entering into a contract to purchase, as the information outlined below may not address the specific purchase circumstances of a particular unit or development.

2.2 Leasehold and freehold ownership

The ownership rights associated with buying a unit, such as an apartment, are generally not the same in legal terms as buying a house. In Ireland, most houses are owned freehold, which essentially means that when you buy them, you acquire legal ownership of both the property and the land on which it is built. Multi-unit development properties, such as apartments, are generally owned as leaseholds, which means that you own the property, but not the land on which it is built. In such cases you cannot own your apartment outright, or "freehold" in the same way as you might own a house. The freehold of the land will generally be owned in the first instance by the developer who will generally transfer it to the management company.

Leasehold ownership means that the property is owned for a specified number of years, after which ownership reverts (theoretically at least) to the freeholder (land owner). In a multi-unit development, each owner will hold a "lease" on his or her apartment. The terms of the leasehold will be set out in your contract to purchase. Leaseholds in multi-unit developments tend to be very long leases (perhaps as long as 999 years) which you can sell on to a new owner

when you wish, or leave behind in your will. Your solicitor should explain to you how they apply to your particular circumstances and explain in plain English what you own and the terms of ownership.

2.3 Ownership and maintenance of the common areas

If you are buying off the plans, ask your solicitor if the planning permission requires that a management company be set up. Your contract to purchase should set out who owns the common areas and who is responsible for maintaining them. In cases where the developer still owns the common areas, the documentation will set out the conditions under which ownership of the common areas will be transferred to the owners through a management company.

The legal documents you sign to purchase your unit may outline for example that it is the developer (acting through the management company) who owns the common areas and is responsible for management of the development. In such cases the developer decides on the services that will be provided, who will provide these services (the developer may appoint a managing agent to act on their behalf) and the price that service charges will be set at. The legal documents may state that these responsibilities should pass to the management company when the transfer of the common areas takes place. The contract for the sale of the reversionary interest to the management company is the document which makes this legally binding.

As there is no standard process for transfer of ownership of the common areas, it is important that your solicitor explains to you what the terms and conditions with regard to transfer of ownership of the common areas are and the current/future role of the owners in the management company.

2.4 Standard contract for the sale of property

A contract is an agreement between two or more parties that is enforceable by law. Contracts may differ in many ways and there are no hard and fast rules governing what terms should be in a contract. Anyone involved in a contract

should be clear about what their obligations are under the terms and conditions of the contract. Your solicitor should help you in this regard. In the event of a dispute between the parties, the contract is the critical legal basis for resolution.

The standard contract for the purchase of property most widely used is the standard conditions of sale contract published by the Law Society of Ireland. This contract binds the parties to the property transaction. It is designed to ensure that there is a fair balance of rights and obligations between buyer and seller. The standard contract specifies things such as the agreed purchase price and the completion date. On receipt of contract, your solicitor will examine its terms and conditions. Before signing, take time to read the contract through and ensure that your solicitor explains the terms and conditions to you so that you fully understand what they mean. If you do not understand any words or the meaning of the term is unclear, always ask for an explanation.

While the standard contract uses a set format and contains standard clauses, it may also contain additional specific terms and conditions specific to your property purchase. These are known as the “Special Conditions”. Your solicitor should inform you as to what the meaning of any of the relevant special conditions are. The contract for sale may include the building agreement contract. In such instances, the contract is actually a “contract for sale and building agreement”.

2.5 The building agreement contract

The building agreement contract is used in addition to the contract for the sale of property where the purchase involves the construction of a new residential property. A standard building agreement contract drafted by the Law Society of Ireland and the Construction Industry Federation is often used.

The building agreement essentially refers to the bricks and mortar of the property and outlines both the buyer

and sellers rights and responsibilities. For example, the building agreement specifies the financial terms and the payment milestones, i.e. how, when, for how much and in what manner the unit will be built and paid for. It will also define the extent of the builders' obligations to the buyer in terms of how the unit is built. In the building agreement, the buyer is referred to as the Employer and the seller as the Contractor.

This contractual documentation, and in the case of an apartment, the lease, will set out the terms and conditions under which you agree to purchase the property. These rights and responsibilities become legally binding when you sign the contract and it is essential that you are aware of what exactly they mean. As well as relating to your individual unit, the contract will also set out your part ownership of the common areas, setting out the rights and responsibilities that this ownership confers upon you.

In general, where the developer owns the land and builds the units for sale, both the contract for the sale of property and the building agreement will be interrelated and will provide for the fact that the developer will convey title (ownership of the property) to the purchaser upon completion of the unit by granting him a lease.

2.6 The lease contract

The lease contract is a legal document which each purchaser signs when buying property in a multi-unit development. The lease will set out the legal responsibilities and obligations of owners, the developer and the management company. The management company is included in the terms of the lease to enable it to undertake ownership and management of the common areas when conveyed by the developer. Under the terms of the lease, the management company agrees to provide the services required to maintain and manage the development and owners agree to pay an annual service charge to the management company to pay for those services.

As regards owners, it will generally outline what they must do in relation to maintaining their unit, such as keeping

it in a state of good repair, not creating a nuisance and paying the service charge. The lease will set out what the service charge is and how it has been apportioned to you. Apportionment of service charges is explained in section 3.3. The lease will also require the owner to obey any rules and regulations as may be set down by the management company from time to time in the form of house rules. House rules are explained in section 5.

It is essential that you ask your solicitor to explain the terms and conditions of the lease document to you and that you fully understand what is expected of you as a unit owner and what you can expect of the developer and the management company. If you do not understand any words or the meaning of a term is unclear, always ask your solicitor for clarification. You should request a copy of the lease document for future reference from your solicitor when you complete the purchase.

2.7 Requisitions on Title

As part of your solicitors conveyancing work they should raise what are known as Requisitions on Title. Requisitions on Title are a checklist of standard questions relating to the sale of a property drafted by the Law Society of Ireland. The questions are mainly general but in part specific to the property and are asked to ensure that everything is in order with the property you are buying. The seller's solicitor should answer all of these questions before any final closing arrangements are made.

In relation to management companies, a number of specific Requisitions on Title are outlined below for information.

2.7.1 Sample Requisitions on title relating to management companies

» Your solicitor may request that the seller provide:

- The lease of the common areas to the management company;
- Contract for the sale of the reversionary interest to the management company;

- Block insurance policy;
- Memorandum and Articles of Association of management company;
- » Your solicitor may request that the seller confirm that on completion of the development:
 - One management company will be responsible for the maintenance of the development;
 - The service charge will be divided equally among the units;
 - The only members of the management company will be the owners;
 - Each of the owners will have the same voting rights.
- » Your solicitor may enquire:
 - If the seller is aware of any proposal by the management company to carry out work/incur expenditure which would substantially affect the service charge payable at present?
 - If it is the developer, management company or managing agents managing the development?
 - Whether the services (including roads, footpaths sewers and drains) abutting or servicing the development have been taken over by the Local Authority?
- » Carrying out searches;
- » Ensuring that there are no judgements against the property or to ensure that they are cleared before completion;
- » Arranging registration of the title in the new owner's name after the sale of the property;
- » Examining the contract for the sale of the reversionary interest of the common areas to the management company;
- » Examining the Memorandum and Articles of Association of the management company;
- » Explaining how much the service charges will be and how they have been divided between individual owners;
- » Requesting the most recent set of financial statements from the management company;
- » Requesting a copy of the management company's budget;
- » Enquiring if a sinking fund is in place/planned? What the present level of the fund is and in whose name is it held;
- » Checking if the seller is aware of any proposal by the management company to carry out work/incur expenditure which would substantially affect the service charge payable at present;
- » Enquiring if one management company will be responsible for the maintenance of the development;
- » Enquiring if it is the developer or the management company or a firm of managing agents managing the development;
- » Procuring details of the managing agent;
- » Ensuring that the development has compliance certification with regard to Planning Permission, Building Regulations, including a fire safety certificate under Part B, Fire Safety, of the Regulations;
- » Enquiring if the property complies with Energy Performance Regulations and what the Building Energy Rating will be.

2.7.2 Other important issues your solicitor may raise

Some other key issues your solicitor may examine include:

- » Ensuring that the person selling the property is the sole owner or has the right to sell;
- » Evaluating the contractual documents to ensure they safeguard your interests;
- » Ensuring that a 'good' title is obtained and verifying ownership;
- » Checking buildings insurance and in due course arranging for your name to be included on the block insurance policy;
- » Checking whether land has been registered and the existence of any restrictive covenants;

2.8 Memorandum and Articles of Association

Your solicitor should also request the Memorandum and Articles of Association of the management company. These are the company law documents used to define the aim of the company and the way it will be structured and run. The Memorandum and Articles of Association are very important as they set out how the management company will be governed and what rights owners will have in terms of having a say in how it is run. Of particular importance is the fact that the Articles set out who the directors of the company are (i.e. who is responsible for running the company) and what voting rights you, as a member will have. A more comprehensive explanation of the importance of the Memorandum and Articles of Association is set out in section 9.6.

2.9 Membership of the management company

Depending on the legal structure of the management company, a Membership/Share Certificate will be issued by the company to each member/shareholder. The Membership or Share Certificate is a legal document that confirms that you, as the owner of a unit, are under the terms of your purchase agreement a member of the management company.

This will be one of the key legal documents handed over to you when the purchase of the unit has been completed. It is important you ensure that you receive this document from your solicitor who should obtain it on your behalf. When you become a member your contact details must be taken for the register of members. This register sets out information such as your name, address and the date on which you became a member. The register of members is important as it is used to notify members of meetings of the management company and also to identify all persons who must pay service charges. The register is generally kept at the management company's registered office and it must be open to inspection to every member free of charge.

The register of members must also be submitted to the Companies Registration Office where the public may view it. More information on the register of members is set out in section 9.7.

2.10 What rights do you have as a member?

The use of a company structure means that company members have certain rights by way of the provisions of company law, in particular the Companies Acts. Under company law members are entitled to:

- » A copy of the Memorandum and Articles of Association of the company;
- » To inspect and obtain copies of the minutes of general meetings of the company and resolutions;
- » To inspect and obtain copies of the various registers kept by the company, including the register of members and the register of directors and secretaries and their interests;
- » To obtain a copy of the periodic financial statements, directors' reports and auditors' report relating to the financial affairs of the company;
- » Participate and vote in the company's annual general meeting (AGM).

A more in-depth explanation of the rights members of management companies have is set out in sections 9-14.



Section 3 - 6

3. **Service Charges**
4. **Sinking Funds**
5. **House Rules**
6. **Managing Agents**

3

Service Charges

3.1 Introduction

The management company must decide what services are required for the common areas to be maintained in a state of good repair. To pay for these services, unit-owners pay a fee on an annual basis known as a service charge. The service charges of all owners are used to pay for services required to maintain and manage the common areas. The payment of an annual service charge is not optional if it is set out as a term and condition of your contract to purchase the unit. You should ensure that your solicitor explains your contractual obligations in this regard.

3.2 What should the service charge be used to pay for?

The range of services required will depend on the individual development. However, service charges should not include costs incurred by the developer in relation to the original design, construction and snagging of the development.

The following are typical services that a service charge may be used to pay for (they therefore only refer to items in common areas):

Cleaning

- » Internal/ External common areas;
- » Windows;
- » Carpets/mats.

General Repair and Maintenance

- » Repair of Lifts;
- » Lift inspections and consultancy.

Landscape and Gardening

- » Lawn Mowing;
- » Landscaping internal/external;
- » Pest Control.

Security

- » Servicing and maintenance of internal locks and doors;
- » Intercom system;
- » Access control (external doors and gates);
- » Smoke alarms, fire extinguishers.

Waste management

- » Refuse collection;
- » Recycling Services;
- » Skip Hire;
- » Gutters & Drains Cleaning.

Utilities

- » Electricity to common areas excluding units direct consumption;
- » Lights external/internal.

Fabric repairs & maintenance

- » Internal/ External common areas;
- » Painting;
- » Car park;
- » Footpaths and roads.

Professional Charges

- » Legal-management company may employ a solicitor;
- » Financial-management company's auditor;
- » Bank charges;
- » Insurance e.g. block insurance, public liability;
- » Other e.g. surveyors, health and safety.

Sinking Fund Provision

- » Refurbishments;
- » Refitting/replacement;
- » Major repairs.

3.3 Apportionment

Apportionment refers to the method in which the percentage of the overall service charge for the development is attributed to individual owners. The calculation may be based on a number of factors, for example the size or type of unit; the services availed of by a unit or the total number of units in the development. In general, in a new development, the developer will set out the apportionment method under which each category of unit owner shall be required to pay their annual service charge/sinking fund contribution. Details of the basis on which your service charge contribution has been apportioned should be set out in the contractual documentation to purchase the property. Your solicitor should explain the basis on which the service charge has been apportioned to you.

The service charge should be apportioned among owners based on a transparent methodology applied consistently throughout the development. Information on apportionment should outline the costs for each type of unit within the property. Specific services provided to only some owners should be set out in additional specific schedules. The management company should regularly review the apportionment methodology and report on any related issues at the company's Annual General Meeting (AGM). More detailed information on the AGM is set out in section 12.

3.4 How much should the service charge be?

There is no set amount as to what the overall service charge should be. The amount paid by owners will vary from development to development and will depend on the type of services the management company decides to undertake.

You should be aware that the more elaborate the fixtures and fittings of the common areas are, the more services may be needed to maintain them. This may affect the size of the service charge you have to pay. If the common areas are designed to a very high standard or contain elaborate features such as ponds, fountains etc it may cost more to maintain them. Another significant determinant is the number of lifts, pumps, fire systems or electronic gates in the development. The size of the development in terms of grounds and landscaped areas together with finishes i.e. if walls are painted or rendered is also a factor. Services such as the provision of 24-hour concierge/security services will also affect the service charge level.

3.4.1 Service charge increases

While the amount that you pay as a service charge in the first year is likely to be detailed in your initial purchase contract, the service charge for the following years may not be. The management company may have a schedule of the costs used for the annual service charge budget and you should ask your solicitor to obtain a copy of this for you. Your solicitor should enquire and tell you what the service charge to be levied for the development in the first year is and enquire if there is an estimate of charges for future years.

You should be aware that the service charge budget may vary from year to year and the amount that you contribute via your service charge payment may vary accordingly. The service charge payment may increase due to inflation and new/additional services being provided. In general, future charges should be based on normal wear and tear and average inflation costs.

3.5 Who decides how much the service charge will be?

It is up to the directors of the management company to decide the service charge when setting the service charges budget every year. The total budget is paid for by each owners individual payment which is based on the apportionment methodology. The issue of management company budgets is set out in section 14.

While the directors may be advised and guided by the managing agent, ultimate responsibility for the setting and collection of service charges lies with the management company.

3.6 Payment of service charges

Typically, you will be invoiced in writing by the management company (although this service may be undertaken by a managing agent on the company's behalf) on an annual basis. There should be a payment due date e.g. 14 days shown on the invoice. You should note that some management companies charge interest on money owed or late service charge payments. The management company should provide you with as much practical information as possible with regard to how last years service charges budget has been spent and how the service charge for the forthcoming year has been calculated.

At a minimum, the management company must once every year, hold a general meeting of the company and file an Annual Return with the Companies Registration Office which contains certain fundamental information about the company and its financial activities. (See section 13). However, in addition to their statutory requirement, the directors should consider providing detailed income and expenditure information in relation to service charges.

Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency has developed an interactive document to summarise and outline the typical categories of company income and expenditure which can be adopted by a management company to help owners understand how the service charge money is being spent. This document is available at www.consumerproperty.ie

3.6.1 Tax relief for service charges paid

Subject to terms and conditions, income tax relief is available if you pay service charges to local authorities and other independent contractors. Tax relief is given at the

standard rate of tax for any service charges paid in full and on time in the previous calendar year. The following qualify for income tax relief and relate to all service charges paid to:

- » Local authorities for the provision of domestic water supply, domestic refuse; collection or disposal, or domestic sewage disposal;
- » Group water schemes for domestic water supply;
- » Independent contractors for domestic refuse collection or disposal.

Further information on service charges tax relief is available from the Revenue Commissioners' website at www.revenue.ie

3.6.2 Non-payment of service charges

If you are dissatisfied with the service being provided by the management agent or the information on how the service charge is being spent, you should raise the issue with the management company in the first instance. While a managing agent may deliver services on behalf of the management company, responsibility for service charges ultimately rests with the management company. Where there is a problem with services, the directors, under the direction of its members, should investigate the cause of the problem.

Where you are dissatisfied with the level of service being received, stopping payment of the service charge is not advised. Stopping payment of service charges may be a breach of your contractual obligation under the terms of your lease. If an owner does not pay their fees, they may be liable to legal action and any outstanding debts can be tied to the unit.

If your management company does not collect charges, it will run short of money and in time it may not be able to provide even the most basic services.

3.7 What questions should you ask about service charges before buying?

- » Check with your solicitor as to how service charges have been divided between individual owners. This is known as apportionment. This should be shown in your lease. See also section 3.3;
- » Find out how much your service charge will cost and ask for a detailed list of the services that it covers;
- » If possible, find out about service charges in similar developments (age, size, style) in the area;
- » Request a projection of future service charges;
- » If relevant, ask to see the most recent set of financial statements from the management company;
- » Ask about the sinking fund. If it is low or doesn't exist owners may have to pay more in the form of a once off increase in their annual service charge when significant work has to be done;
- » Ask if there is a history of withholding charges in the complex? By not paying service charges, owners damage the financial health of the management company and its effectiveness. This may affect the value of your investment.

4

Sinking Funds

13

4.1 Introduction

The sinking fund is money that is put aside every year from the service charges budget to cover the cost of major long-term expenses. While the service charges budget is generally used to fund the costs of the day to day maintenance of the common areas, a portion of the budget should also be set aside to cater for periodical or long term structural repairs. Before you buy, you should enquire from the estate agent or your solicitor if a sinking fund is in place/planned for the development.

4.2 What do sinking funds cover?

As regards the fundamental items that management companies should consider as part of their sinking fund calculations, it is difficult to be precise or definitive on the key elements required. This is largely because factors such as the management company/surveyors views, building age & condition, usage, location, type of materials used will vary significantly from development to development.

Amongst some of the most common areas a sinking fund may cover are repair, refurbishment or replacement of:

- » Building structure;
- » Windows and walls;
- » Roof and roof finishes;
- » Internal partitions;

- » Floor structure;
- » Internal and External Decoration;
- » Plumbing and Water services;
- » Heating and Ventilating;
- » Lifts and Escalators;
- » Mechanical and Electrical Services and infrastructure.

4.3 Why should a sinking fund be established?

There is no legal requirement for management companies to establish and maintain a sinking fund. However, it is advisable that all multi-unit developments should have a fund in place to pay for medium to long-term capital expenditure in respect of the maintenance and upgrading of the development and for the financing of non-recurring or unexpected additional expenses incurred in relation to common areas.

If no sinking fund is established, or, the level at which it is set is too low, the costs of any major refurbishment or repair work may have to be added to the annual service charge and may represent a very large once off payment for all owners. Having a sinking fund in place reduces the likelihood that the management company may have to impose a once off major increase in the annual service charge. Postponement of structural repairs to the common areas may add to the eventual cost of their repair and failure to carry out structural repairs may seriously affect owners' quality of life and the value of their unit. It is in all owners' interests to have regard to the importance of a sinking fund. A well financed management company with a sufficient sinking fund should ensure that the development is well maintained and represents an attractive prospect to any potential purchaser.

4.4 How should a sinking fund be calculated?

The management company should obtain professional advice on the necessary sinking fund contribution each year. A member of an appropriate suitably qualified professional body, e.g. an architect or a chartered surveyor, should

estimate the sinking fund. While the managing agent may assist in arranging consultation services with a professional to undertake a sinking fund estimate, unless they are qualified as a relevant construction professional, they will not be in a position to estimate the sinking fund level. As with the service charge, the management company should outline the basis of calculation.

4.5 What factors should be considered in a sinking fund?

The sinking fund should be based on the existing condition of the property, its potential infrastructural liabilities and a planned maintenance programme.

Estimating a sinking fund requires that a detailed job specification is set out. This involves an expert assessment of the life of parts of the building and the likely costs of replacement or other works at the anticipated time of carrying them out. The assessment would outline the key factors involved such as the intended lifespan of assets to be covered by the sinking fund, the estimated schedule of work, the lifecycle of structural materials and components and the type of building involved. In this regard, the provision by developers of a capital assets register and the provision of quantitative and qualitative information on the materials used in construction is useful. The projected sinking fund estimates would also rely on other factors such as the current state of repair of the building in question, current service provider and materials costs and inflation.

Section 4.5.1, outlines some of the common area items that may need repair and or replacement. This list is not exhaustive as each development would require individual evaluation taking into account the current state of repair, age, lease details, etc.

4.5.1 Table of possible sinking fund items

EXTERNAL WALLS	CEILING FINISHES
External brickwork	Balcony
Copings	Common area plastered ceiling finishes
INTERNAL WALLS	Paint ceiling finish
Stud partitions (common areas)	ROOF FINISHES
EXTERNAL WALL COMPLETIONS	Gutters / downpipes
Dividing screens - terrace	Roof coverings
Screen to bin stores	Paint to membrane surfaces
External entrance doors	Flashings
Plant room doors	Eaves and verges
External windows	MECHANICAL SERVICES
Painting to external metal work e.g. balustrades	Water main distribution / tank & pumps
Painting to external windows, doors, plant room doors	systems
Painting to external metal work balustrades	TRANSPORT
INTERNAL WALL COMPLETIONS	Lifts
Internal doors to circulation	STORAGE, SCREENING FITTINGS
STAIRS COMPLETIONS	Post boxes
Balustrades	SITE ENCLOSURES
Handrails	Dividing walls to terraces
ROOF COMPLETIONS	External boundary walls
AOV & vents	Railings
EXTERNAL WALL FINISHES	Gates
External cladding	Painting to external metal work railing
Dividing screens - terrace	External steps
External plaster	Vents to car parking
INTERNAL WALL FINISHES	ROADS, PATHS & PAVINGS
Internal plaster	Tarmac areas
Internal doors	Line marking
Painting internal screens	External paving
Paint Internal Walls; common areas	Kerbs
FLOOR FINISHES	SERVICES
Timber decking to balconies	Lighting to external areas
Floor tiling common areas	Motorized door equipment
Carpet to Common areas	Drainage systems, pumps etc.
Matwells	SITE FITTINGS
STAIR FINISHES	External seating
Skirtings / trims to stairs & landings	Bicycle racks
Floor finishes to stairs	Garages
Painting skirtings to stairs & landings	Car Parks
Paint balustrades and handrails	

4.6 What time period should the sinking fund cover?

It is difficult to put an indicative timescale on sinking funds i.e. what period of time they should cover, 5,10,30 years etc. The timeframe for a sinking fund depends on individual project specifics. Drafting an item and replacement timescale schedule is the most optimum method of deciding what time frame they should cover. Assessing when key items are likely to need replacing and how much they are likely to cost is the best means of deciding how costs should be spread out across over time.

As far as possible, the sinking fund should relate to specifically identified expenditure (e.g. roof, boiler plant, lift etc.) bearing in mind the anticipated life cycle of the development rather than unidentified future liabilities. With regard to estimating the longer-term expenditure to be met by the sinking fund, the directors could consider employing a chartered surveyor every 3-5 years to assess the short, medium and long-term maintenance issues which are necessary if the development is to remain in a state of good repair.

4.7 Where should sinking fund monies be held?

The sinking fund contribution is generally paid by owners as part of their service charge fee. While there are no specific rules regarding a company's banking operations, it is considered good practice for the directors to open and operate separate bank accounts for the service charges (current account) and the sinking fund (interest bearing account). These accounts should be operated in the name of the management company.

Payments from the sinking fund account should require the formal approval of the directors.

The sinking fund should be clearly set out in the management company's annual financial statements as part of the balance sheet. The annual accounts should detail contributions to and expenditure from the sinking fund account together with opening and closing balances and the amount of interest earned.

5

House Rules

5.1 Introduction

Most management companies draw up a set of rules known as house rules, which typically set out standards and rules for communal living. The purpose of the house rules is to ensure that the common areas are maintained to a good standard and that the scope for conflicts and disputes between neighbours is reduced.

Your solicitor should advise you on the terms and conditions of house rules. When you sign the lease it becomes a legal requirement that you adhere to the house rules. It is important therefore that you know these rules and if you are a landlord you should ensure that your tenants are familiar with them by incorporating the rules as part of the tenancy agreement.

5.2 What are house rules?

Examples of house rules may include restrictions on noise levels, limits on alterations to the external appearance of units, a ban on the keeping of pets, restrictions on hanging laundry from balconies, rules on refuse disposal, car parking etc. The exact terms and conditions of the house rules will generally be set out as part of the lease agreement. These are generally presented as a standard set of 15-20 specific rules, but the precise terms and conditions of the rules may vary.

House rules typically appear as part of the lease in the following manner:

- » All stereo, radio and TV appliances must be kept at a volume which does not interfere with your neighbours' quiet enjoyment of their homes. No noise should be audible outside apartments between 9.00pm and 9.00am;
- » It is not permitted to hang or expose clothes/laundry or any other articles inside or outside their apartment so as to be visible from outside the apartment. Under no circumstances should washing/laundry be hung out to dry on balconies;
- » The managing agent must be provided with phone numbers where residents can be contacted during the day or at night. Where apartments are let to tenants it is the apartment owner's obligation to ensure that the agent has the contact names, address and phone numbers of the tenants;
- » Vehicles should be parked in the car park in such a way so as not to obstruct access to the apartment block, exits etc.

5.3 House Rules Disputes

The management company is ultimately responsible for setting and enforcing the house rules. The procedures and responsibility for dealing with complaints in relation to the house rules should be clearly outlined and communicated to all owners and residents by the company directors. It is important that you know who is responsible for ensuring that the rules are obeyed and what should be done in the event that disputes in relation to the house rules arise. In some instances, there may be limited legal means by which disputes might be resolved. Good communication, goodwill and the cooperation of all residents, be they owners or tenants are required. Depending on the lease and the company's articles of association, the rules may be changed, added to, or repealed by the directors or by a vote at the company's annual general meeting.

6

Managing Agents

17

6.1 Introduction

As the task of maintaining the common areas can be time consuming and specialised, many management companies employ professional firms known as managing agents to administer the maintenance of the common areas on their behalf. Managing agents and management companies are two very different entities and should not be confused. The management company employs the managing agent firm and ultimately the agent is accountable to the management company for its actions. The information set out in this section is an overview of some of the functions of managing agents and the services they provide.

6.2 Managing agent services

At present, there are no specific qualifications or licenses required to operate as a managing agent, but this is likely to change after the National Property Services Regulatory Authority (NPSRA) is established on a statutory basis.

The range of services provided by managing agents varies from firm to firm and it is not possible to have a complete and exhaustive list. Some of the most common services that agents provide to management companies are:

- » Maintaining the common areas (e.g. cleaning, refuse collection etc) often by engaging subcontracted tradespersons to carry out this work;

- » Carrying out inspections and organising internal and external common area repairs;
- » Procuring suitably qualified professionals such as surveyors to estimate the sinking fund;
- » Collecting service charges from owners;
- » Advising the directors on appropriate levels for service charges, the setting the annual budget and administration of the management company's accounts;
- » Arranging insurance cover for the common areas;
- » Paying accounts (for example, electricity charges, waste disposal);
- » Arranging and undertaking administrative duties in relation to annual general meetings and returns to the Companies Registration Office;
- » Maintaining management company records (for example, the members' register, minutes of meetings);
- » Arranging mechanical and electrical services and repairs;
- » Responding to reactive repairs and emergency services;
- » Organising and attending management company meetings;
- » Issuing information and advice and responding to enquiries from owners;
- » Organising the management company's finances e.g. accounting and maintaining bank accounts.

Additional services to the above may be provided depending on the services offered by the agent or the management company's requirements. Management companies should consider the type of services which are absolutely essential in the first instance before considering extra services. While it is important to make sure that the management company gets a quality service and value for money from the agent, it is also vital to make sure that the entire annual budget is not spent on the day-to-day services provided to maintain the common areas and that monies are put aside in a sinking fund.

6.3 First appointment of the managing agent

In new developments, the developer generally establishes the management company at the outset, often before the first unit is sold. (See section 7.5) It is likely in such cases that the developer or their nominees as directors of the management company will appoint the initial managing agent. The developer should refrain from committing the company to long-term agreements with any agent pending formal transfer of control of the management company to the owners.

When the agent is first appointed, the developer should arrange for purchasers to be informed. Owners should be informed of the specific duties to be provided by the agent, how they may be contacted and how requests/complaints from owners are to be handled. As part of the contract, the agent should agree to meet at least quarterly with the members of the management company or any residents committee. Such a committee may be formed by owners to represent and articulate their interests pending the transfer of control of the management company from the developer to the owners.

To facilitate the agents in their work, on establishment of the management company or as soon as is practicable thereafter, the developer should provide the agent with:

- » The title documents and counter part leases;
- » Agreed snag list and practical completion certification;
- » As built drawings;
 - A register of all capital assets;
 - Warranties and other guarantees, including test records for drainage, water and heating pipe work;
 - Certifications for Fire Safety, Health and Safety, Planning and Building Regulations.

6.4 How are managing agent services paid for?

Employing a managing agent will require the management company to pay the agent a fee. This should be paid out of the management company's annual service charges

budget. The agent's fee should be clearly identified as such in the company's financial records.

6.5 How much should a managing agent cost?

The cost of employing a managing agent will depend on the firm and the services the management company requires. There is no set fee. To help ensure value for money, management companies should employ agents based on a competitive and transparent tendering process. It is advisable that the management company get a number of quotes to ensure the most suitable agent has been selected both in terms of value for money and quality of service provided. (See section 6.9).

6.6 What should I do if I have a complaint about a service provider e.g. a managing agent?

The contract between the managing agent and the management company should specify the process for dealing with complaints from owners. If you are dissatisfied with the performance of your managing agent, you should always raise the issue with the management company, as it is the entity with the contractual relationship with the managing agent. Where there is a persistent problem with an agent, the management company directors, under the direction of its members, should investigate the cause of the problem.

If a dispute does arise between the management company and the agent in relation to their performance or aspects of the terms and conditions of the contract, it is advisable that the management company attempt to resolve the matter with the agent. The company should keep copies of all correspondence (including emails if you have communicated in this way) and records of phone calls with the agent.

Where you are dissatisfied with the level or quality of service being received from the agent, stopping payment of the service charge is not advised, as this is a breach of your contractual obligation to the management company

under the terms of your lease. Where a proportion of owners do not pay their service charges, the result may be that the managing agent ceases to provide services to the development. This can affect the value of the development and individual units.

6.7 Can the management company cancel the agent's contract?

Depending on the contract between the management company and the agent, the management company may be entitled to terminate the contract and to engage another agent to conduct the work. If the management company wishes to cancel the service of their managing agent, the means by which this is done should be clearly outlined in the terms and conditions of the contract between the agent and the management company. The management company must however, obey all legal requirements set down in the contract with the agent.

6.8 Managing agent contracts

It is very important when employing an agent, or, any other service provider, that the management company specifies the services and related costs to be provided in writing. The written contract will set out the obligations and responsibilities of both the agent and the management company.

The management company should ask the agent to provide clear and precise information in plain English as to the services they are agreeing to provide, how they propose to provide them and the frequency and quality with which they will be delivered.

The general obligations and responsibilities of the managing agent should always be clearly set out in the contract and it is vital that all owners are informed as to what services they should expect to receive. If there are any specific services that the managing agent is not responsible for providing, for example enforcing house rules, it is equally important that owners are made aware

of where responsibility lies. The management company should ensure that all owners are aware of any such information.

In the event of a dispute between the parties, the contract is the critical legal basis for resolution. To ensure that the terms and conditions of the contract safeguard their interests, management companies should consider seeking independent legal advice before entering into a contract with a managing agent.

6.8.2 What should be in the contract?

Contracts may differ in many ways and there are no hard and fast rules governing what terms should be in a contract. At present, there is no standard contract which management companies and the managing agents that they employ are obliged to use. Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency has developed a comprehensive set of practical guidelines for consumers unfamiliar with what should be considered and agreed between both parties and what should be set out and covered in the contract. This document is attached at Appendix 3.

6.9 Choosing a managing agent

Choosing a managing agent is one of the most important tasks a management company will undertake. The amount of money you have to pay for your annual service charge is greatly affected by how competitive and competent the agent's service is. The quality of the agent's service is also vital to the long-term value of your unit because if the development is maintained to a high standard it is more attractive to potential buyers. Management companies should always keep costs under review and where appropriate, require agents to submit competitive tenders or provide competing quotations. The following general advice may be useful when choosing a managing agent or other service provider.

- » Know what your budget is – you don't need to disclose what you can afford if you are negotiating on price;
- » Be clear and specific about the work you want carried out, ask about the quality and frequency of service;
- » Get several quotes detailing specifically what work needs to be done and the price you will have to pay. The cheapest quote may not provide the best quality work;
- » Ask if the fees are inclusive/exclusive of VAT;
- » If possible try to get a personal recommendation from an informed, experienced person. If possible, visit other developments managed by this agent; this may help you make your decision. Ask for references from other management companies and check if the agent is registered with the Companies Registration Office;
- » Spell out what work is being done, timings, costs and any other important aspects;
- » Check that the agent that you engage has appropriate insurance, particularly professional indemnity insurance. Even where a management company asks the agent to do things for them, the company is still legally responsible for any neglect, omission or mistake by the agent. This means they must be sure that the agent is able to pay for compensation or damages. Professional indemnity insurance is an important requirement for most professional businesses. It protects firms and their employees against claims which may arise as a result of their professional conduct, neglect, error or omission.

6.9.1 Sample covering letter inviting tenders for managing agent services

The cover letter template overleaf and the questions outlined in 6.9.2 may be useful to adapt when the management company is choosing a managing agent or any other form of service provider.

Dear (insert name)

Re: (Name and address of management company and development)

We are in the process of reviewing the appointment of a managing agent to manage our development. Descriptions of the property and services required are enclosed (for guidance only); these will be used to evaluate tenders on a like-for-like basis (please note that the cost of your service will be a key element in our decision). If you would be interested in applying, could you please let me know when you would be available for an initial meeting; it would be most helpful if you could let me know in writing no later than (date). Subsequently we may wish to visit the offices of short listed applicants.

Any further information you require may be obtained from (name) at the above address. We look forward to hearing from you shortly.

Yours sincerely (Name and position)

- » Where and how do you keep service charge monies, and how are they administered and who receives any interest?
- » Can you supply an example of the format of financial information you will use for our development?
- » How do you deal with unpaid service charges - what procedures are in place to deal with non-paying lessees?
- » How do you deal with owners in breach of their leases?
- » How do you deal with complaints?
- » Do you offer an out-of-office-hours service for emergencies? If so, please provide details.
- » List any professional bodies to which your firm belongs.
- » Please provide full details of your professional indemnity insurance.
- » Please provide proof of your financial probity.

6.9.2 Checklist of potential questions to ask prospective managing agents

Please provide all relevant company details, including the names and qualifications of all directors and a list of proprietors if not a quoted company.

- » How many years have you been in the property management business?
- » How many developments do you manage, and how many units therein?
- » Please supply three references for blocks you manage. Ideally these should be similar to our own property and in our area.
- » What is your fee structure?
- » What selection criteria do you use for contractors on your panels?
- » How often does a representative from your company visit blocks you manage and check on how your contractors fulfil their obligations?



Section 7 & 8

- 7. Developers
- 8. Snagging

7

Developers

7.1 Introduction

In this Guide the term developer is used to refer to persons or companies who build, own and sell multi-unit developments. Under contract law the developer must complete your unit in accordance with the terms and conditions as set out in your contract to purchase. The contract should outline the role and responsibilities of the developer with regard to your unit and also the development as a whole. In addition, the developer must also complete the development in accordance with the terms and conditions of planning permission and the building regulations.

7.2 Planning Permission

Local planning authority 'planning permission' to build, alter or develop must be obtained prior to construction commencing. The developer must comply with the planning permission. The certification of such compliance is included in all requisitions on title furnished at closing of sale. The planning authority can secure compliance with planning permission granted. The planning authority also holds some of the developers money in the form of securities, bonds and/ or cash deposits to ensure full compliance with terms of planning permission granted. The planning permission will also set out what if any parts of the development are intended to be taken in charge by the local authority. (See section 7.4)

7.3 Building Regulations

Building Regulations are legal requirements set by the Department of the Environment, Heritage and Local Government which provide for the health, safety and welfare of people in and around buildings. The regulations are technical guides which set out the basic requirements to be observed by those involved in the design and construction of buildings. If you are having construction work carried out, or purchasing a property, the work must meet the standards required under the regulations. The regulations apply to the construction of new buildings, extensions and material alterations to existing buildings and certain changes of use of existing buildings.

7.4 Building Regulations Compliance

The Building Regulations cover the following areas:

- » Structure;
- » Fire;
- » Site preparation and resistance to moisture;
- » Materials and workmanship;
- » Sound;
- » Ventilation;
- » Hygiene;
- » Drainage and waste disposal;
- » Heat producing appliances;
- » Stairways, ramps and guards;
- » Conservation of fuel and energy;
- » Access for disabled people.

Primary responsibility for compliance with the regulations lies with designers, builders and building owners. The building control authorities have powers to inspect design documentation and buildings.

They can also enforce and prosecute where breaches of the regulations occur. A guide to the regulations is available from the Department of the Environment, Heritage and Local Government at: www.environ.ie

7.5 Taking in Charge

Taking in Charge refers to the process whereby local authorities, where developments have been completed to their satisfaction, manage and maintain public lighting, new roads, open spaces, car parks, sewers, water mains or drains, where requested by the developer or a majority of the qualified electors who are owners or occupiers of houses or other dwellings. Where the development is not yet complete, the local authority must take responsibility for the roads and comply with Section 11 of the Roads Act, 1993 if requested to do so by a majority of the residents that are on the Local Government Register of Electors.

The extent to which the taking-in-charge system applies may vary from development to development. The time frame for taking in charge is dependent on the manner in which the development has been completed in compliance with planning permission. Developers should indicate and make available for use by the appointed sales agent, details of the services and public areas within the development it is intended shall be taken in charge by the local authority and those it is intended shall remain under the sole control of the management company.

The Department of the Environment, Heritage and Local Government issue planning guidance on the taking in charge of residential estates by local authorities. The guidelines state that local authorities must set out their procedures for prompt taking in charge on foot of a request by the majority of the residents in the development or by the developer, as appropriate. Protocols, including time frames, must be set out by to respond to requests for taking in charge.

The most recent policy guidance issued by the Department in February 2008, provides for the taking in charge of the core facilities of public roads and footpaths, public lighting, public water supply, foul and storm water drainage, public open spaces and unallocated surface parking areas etc. by the local authority. Where the development is properly completed in compliance with the

planning permission, the Planning and Development Act 2000 and above policy guidance provides for the prompt taking in charge by the Planning Authority.

Further information on the taking in charge policy and contact details for all local authorities in your area may be obtained at www.environ.ie

7.6 Developers and management companies

Typically, in new developments the developer generally establishes the management company at the outset, often before the first unit is sold. Company law requires every company to have at least two directors and in general the developer will nominate the initial directors of the company. Often the developer or some of their staff, associates or solicitor may fill these roles.

Before the development has been completed, the developer as owner of the common areas will generally be legally responsible for the management and maintenance of the common areas and the will be controlling member of the management company. In such instances, it is the developer (acting through the management company) who is initially responsible for management of the development who decides on the services that will (eventually) be provided. They will also decide who will provide these services (the developer may appoint a managing agent to act on their behalf) and the price that service charges will be set at.

As the primary function of the management company is to maintain the common areas, owners involvement in the running of the management company should be low while the development is being built.

Even though the individual unit owners may have become members of the management company following purchase of their unit, the developer and/or his nominees may often be in control of the company and remain so until the majority of units are completed or sold.

Until ownership of the common areas is transferred to the management company and the developer relinquishes controlling interest in the management company, the owners may not have control in terms of deciding service provision matters. During this period if you have concerns about the services that are (or are not) being provided by the developer the remedy is to examine what property law rights or entitlements are open to you under the lease you have entered into with the developer.

The wording of the management company's Memorandum and Articles of Association are critical in terms of setting out how the management company will operate and be controlled and what rights, you, as a member will have. It is important that your solicitor explains to you what these will be.

7.7 How is ownership of the common areas transferred?

The process under which the developer will transfer ownership of the common areas to the management company is generally set out in a legal document known as the Management Company Agreement or the Contract for the Sale of the Common Areas. This is a very important document as it sets out the legal terms and conditions of how ownership of the common areas will pass from the developer to the management company and what this will entail.

There is no time limit on when ownership of the common areas of a development must be transferred from the developer to the owners. Developers should advise purchasers of the intended trigger point under which they will a) transfer control of the management company to the unit owners and b) convey ownership of the common areas. Where a large-scale development plans for phased completion, any schedule for phased transfer and conveyance should be clearly set out in the contract for sale.

Your solicitor should explain to you when it is intended that control of the management company and ownership of the common areas to the unit owners will take place.

At present, the standard conveyancing documentation provides that the developer will transfer ownership of the common areas to the management company after completion of the development. The typical phrase in the legal contract will say that this will occur “as and when the last unit has been sold”. If you buy and live in your unit during this period your solicitor should make you aware that you may be buying into a situation where transfer of control of the common areas (and/or the management company) may be deferred for a period of time and owners may have little or no say in how the development is being managed.

In the period prior to the transfer of control of the management company to unit owners, the directors should at a minimum provide half-yearly updates regarding the activities and financial status of the management company. They should make these updates available on request to any residents committee.

7.8 How is control of the management company transferred?

Transfer of control of the management company may be dependent on the completion of the development and/or the sale of the final unit or both. In some instances, the absence of a uniform definition of “completion” makes it difficult for unit owners and developers to reach agreement as to the trigger point for transfer of control. Even after the development is completed, the developer may remain part of the management company.

The developer may remain a member of the company if they have ownership of a unit within the development. However, the voting structure of the management company should not be weighted in such a way that enables the developer to retain a controlling majority after transfer of control of the company to the unit owners.

Before you buy, it is important that your solicitor examines the wording in the Memorandum and Articles of Association to ensure that the terms, particularly as regards your voting rights are acceptable to you as an owner/member.

After transfer of the common areas, the developers' nominees generally resign from their roles as directors. At this stage, unit owners as members of the management company should volunteer to fill the role of directors. This will generally be done at an Annual General Meeting (AGM) of the management company. At the AGM some members must agree to serve on the board of the company. This means that owners, by appointing directors from amongst their rank, assume responsibility for the governance of the management company.

7.9 Code of Practice for developers who are members of the IHBA

Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency and the Irish Homebuilders Association (IHBA) have developed a Code of Practice to be followed by developers who are members of the IHBA.

The Code sets out a series of principles designed to provide a robust framework for the maintenance and management of common areas and for the provision of common services in multi-unit developments. It presents what is considered to be current best practice in the effective management and administration of multi-unit developments.

A copy of the document is attached at Appendix 4.

8

Snagging

8.1 Introduction

The process of snagging involves examining and identifying any potential defects or outstanding building works. Owners employ a construction professional such as a chartered surveyor or architect to undertake this task for them prior to moving into their home. It is generally the last phase of the construction process and compiled prior to final closing of sale.

8.2 What is covered in a snag list?

A snag list is an inventory of items and defects which need to be remedied within the property by the developer. Snags might include damaged building components or problems with the final finishing.

The type of items covered would be cracks in ceilings and walls, skirting boards not properly affixed, internal doors that do not open or close properly, uneven or unfinished plasterwork, crooked light switches, loose wiring, poor insulation, leaking pipes, faulty joints, missing parts (of utilities) and surrounding gardens, particularly if landscaping and paving was agreed. You should also familiarise yourself with the warranties in place for all fixtures and fittings (showers, extractor fans etc).

8.3 Who should carry out the snag list?

The snag list should be carried out by an independent and suitably qualified construction professional such as an architect, engineer or a chartered surveyor. Where potential problems or defects are identified these should be presented to the developer (project manager or foreman) in writing so that they can be rectified before purchase is completed.

8.4 Snagging at unit level

Arrangements for snagging your unit should be set out in your contract to purchase and your solicitor should explain what these are. Generally, as part of the terms and conditions of your contract, the developer will be required to attend to any snagging problems which may emerge in your unit. The usual process is that when the unit has been deemed complete by the developer, they will notify owners and at this stage it is advisable that an inspection snag list be completed. You should note that while the sales brochure or show room may detail the finishes common to all units, the actual specification of any units might in some cases be qualified by a statement if different. The layouts can at times be indicative only and the exact specifications will only ever be set out in the Requisitions on Title.

8.5 Snagging the common areas

While the same principles as regard ensuring a quality standard of finished work applies, the task of arranging for the snagging the common areas (both internal and external) is more complicated than at unit level, because as outlined earlier no one individual owns the common areas. Prior to the vesting of control of the management company and transfer of ownership of the common areas to the management company, the unit owners or residents committee should agree with the developer how and when snagging of the common areas will take place. The owners should establish the extent of the common areas to be snagged with the developer, or through the planning authority. They should appoint a suitably

qualified professional to procure a snag list on their behalf. The developer should liaise with the owners and their appointed professional in addressing and resolving snagging issues in respect of the common areas. It is advisable that adequate provision to pay for the snagging of the common areas be provided for in the service charges budget. Service charges should not however be used to ensure compliance with local authority planning permission requirements.

The following list details some of the items that should be covered in the snag list:

- » The internal and external common areas of the development;
- » Amenities such as gardens, footpaths, courtyards, car parking;
- » All elevations including the roofs;
- » Boundary areas walls and railings;
- » Waste facilities, storerooms, manholes and gullies.

8.6 Does the developer have to attend to all items on the snag list?

The terms and conditions of your contract should set out the developer's commitments with regard to snagging your unit. In general, the developer is required to attend to any snagging problems which may emerge in your unit. The developer should inform you when these defects have been remedied and you should arrange for a return visit to ensure that this is satisfactory.

Where disputes between the parties over the snag list cannot be resolved amicably there are provisions in the standard contract where the parties can request that the dispute be solved by independent arbitration.

8.7 Warranty schemes for major structural defects

A significant number of new properties built in Ireland are registered by the developer with a guarantee scheme such as HomeBond or Premier Guarantee. These schemes

cover structural defects in new houses. Whether your unit is covered by HomeBond or Premier Guarantee should usually be indicated in marketing materials and Requisitions on Title.

8.7.1 Premier Guarantee

Premier Guarantee is a structural defects insurance policy for housing and apartment developments. Protection is extended to all parties with a financial interest in the property and is assignable to future owners. Premier Guarantee automatically affords the following protection:

- » 10 years Structural Defects protection;
- » 5 years cover for ingress of water, chimneys and flues;
- » Up to 6 months alternative accommodation costs;
- » Sums insured increased annually by 5% or the House Building Cost Index, whichever is the lesser, free of charge.

Further information on Premier Guarantee is available from: Coyle Hamilton Willis, Grand Mill Quay, Barrow Street, Dublin 4.

8.7.2 HomeBond

If you have purchased a HomeBond registered property then you have a warranty in relation to deposits, stage payments, builder's bankruptcy or liquidation and major structural defects. As regards structural defects, these are defined as "any major defect in the foundations of a dwelling or the load bearing part of its floors, walls and roof or retaining walls necessary for its support which affects the structural stability of the dwelling". In addition, HomeBond also covers major non-structural defects which might lead to smoke or water penetration of the completed home.

In the event of a problem arising within the first two years of the ten-year cover it is a condition of HomeBond that you must seek redress from the builder in the first instance. After the first two years you may apply directly to HomeBond in the event of a claim. It is important that

you are aware that HomeBond coverage is limited to major structural defects only. It excludes:

- » Minor structural defects and other non-structural defects;
- » Any defect consequent upon negligence other than that of the member (i.e. the builder) or a sub-contractor;
- » Any defect for which compensation is provided by legislation or which is covered by insurance;
- » Any defect arising in consequence of drawings, materials, design or specification provided by or on behalf of the purchaser;
- » Any defect caused by or damage to anything not built into the dwelling pursuant to the contract for sale or building contract entered into by the builder and the purchaser;
- » Hair cracks, shrinkage, expansion or dampness due to normal drying out of the dwelling or condensation;
- » Wear and tear or gradual deterioration. Consequential loss whatsoever or howsoever arising.
- » Any defect in central heating;
- » Any defect consequent upon installation in or upon the dwelling house by the builder or otherwise of any lift or swimming pool.

Further information on HomeBond is available from: HomeBond, Construction House, Canal Road, Dublin 6



Section 9 - 13

- 9. Management Company Formation
- 10. Management Company Directors
- 11. Company Secretary
- 12. Annual General Meetings
- 13. Management Company Financial Records

9

Management Company Formation

9.1 Introduction

The main reasons why companies are formed to manage multi-unit developments are because they offer an efficient and effective organisational structure and means of management. Companies in Ireland must adhere to the rules of company law, particularly the Companies Acts.

The purpose of this section is to provide a brief overview of the role and function of companies and some of their primary obligations under company law.

9.2 What is a company?

A company is a form of business organisation that is a separate legal entity and distinct from those who run it. The Companies Acts generally allow one or more persons to form a private company for any lawful purpose by subscribing to a memorandum of association. While there are a number of different ways in which companies can be formed, in general, most companies are formed as either private or public companies. The majority of companies registered in Ireland are private companies. When a company is legally established “incorporated”, it can be established as one of a number of different company types e.g. private limited companies, public limited companies and unlimited companies.

There are four types of private company:

1. Private limited by share capital;
2. Single member private limited by capital;
3. Unlimited company;
4. Guaranteed limited company with share capital.

There are three types of public company:

1. Public limited company;
2. Public unlimited company;
3. Guaranteed company without share capital.

There are various stages involved in setting up a company and depending on the company structure different operating and reporting processes may apply. Detailed formation on this process and the governance procedures relating to different types of company structure is available on the website of the Companies Registration Office (CRO) at www.cro.ie. The CRO is the statutory authority for registering new companies in Ireland.

9.3 Why are management companies formed?

While there is no legal obligation to form a management company, the developer building the development usually establishes a company to own, manage and maintain the common areas as company law offers an efficient and effective administration structure and means of ownership.

9.4 How is a company formed?

Perspective companies are obliged to file certain documents with the CRO. The company becomes incorporated after it has submitted details such as its name, activity, registered address, members, secretary, directors, and Memorandum and Articles of Association. When these documents are filed with the CRO they become public documents which any person is entitled to view copies from the CRO.

9.5 What legal obligations do companies have?

Depending on the type of company and the business in which it is involved, the precise obligations of the company under company law will vary. However, all company types must have one secretary and a minimum of two directors, one of whom must be resident in Ireland.

Knowing how the company is structured, governed, and what requirements it must adhere to under company law are critical in terms of understanding what the legal obligations and duties of the management company are. They will also help you understand what rights, particularly as regards access to information, you are entitled to as a member.

Under the Companies Acts, companies must report certain information to the CRO on an annual basis, such as filing of annual returns and accounts (see section 13). Some of the principle duties and obligations that all companies must abide by under company law include:

- » Drafting a Memorandum and Articles of Association;
- » Appointing and keeping a register of members, directors and a company secretary;
- » Registering with the Companies Registration Office (CRO);
- » Keeping records on the financial activities of the company;
- » Filing annual returns on the financial activities of the company to the CRO;
- » Holding meetings and recording minutes of these meetings (Minutes are the written record of a meeting);
- » Providing information as set out under company law to the company's members.

The company must also have a legal address to which all formal notices addressed to the company may be sent. While the registered office can be anywhere in the State, it must be a physical location, not just a post office box number.

9.6 Memorandum and Articles of Association.

These are two documents which companies are required to draft under company law. The main purpose of the memorandum of association is to set out the name and objectives of the company, i.e. the reason for which the company has been established. The Articles of Association are essentially the rules setting out how the company will be governed. These documents are very important as they set out the management company's rules and procedures also outline what rights members will have in terms of having a say in how the company is run. The Memorandum and Articles of Association will state who the directors of the company are (i.e. who is responsible for running the company) and what voting rights you, as a member will have.

9.6.1 Drafting a Memorandum and Articles of Association

The company's main activity must be stated in the Memorandum and Articles of Association. While the Companies Acts set out a standard set of Articles, a company can amend these articles or, alternately, draw up its own. Companies can therefore draft their rules to suit their own purposes provided that the rules are not in conflict with company law.

The standard form of articles for private companies set out the role and rules governing:

- » Directors;
- » Company secretary;
- » Meetings;
- » Votes of members.

Amongst the important areas which management companies are free to draft according to their own terms are: the procedures and frequency that members and directors' meetings will be held; the voting power of members and directors respectively and the extent to which members will be permitted to inspect the accounting and other records of the company.

9.6.2 Changing the Articles of Association

The members of a company can alter the terms of the articles of association at a meeting of the company provided that 75% of the members who are entitled to vote agree on the proposed changes.

9.6.3 Can I see the management company's Articles of Association before I buy a unit?

All companies must lodge their Memorandum and Articles of Association with the CRO and you can request a copy from the CRO. Because of the flexibility management companies have with regard to drafting their operating rules, it is important that your solicitor obtains a copy of, and examines, the wording in the Memorandum and Articles of Association of the management company to ensure that the terms are acceptable to you as an owner/member.

9.7 The Register of Members

When you become a member, your contact details must be taken for the register of members. This register sets out information such as your name/ addresses and the date on which you became a member. The register of members is important as it is used to notify members of meetings of the management company and also to identify all persons who must pay service charges.

The register sets out the following information:

- » Members' names and addresses;
- » Number of shares held by each member (in the case of companies having a share capital);
- » The date on which each person was entered in the register;
- » The date on which each person ceased to be a member of the company.

The register is generally kept at the company's registered office and must be open to inspection to every member free of charge. It must also be submitted to the CRO where the public may access it.

10

Management Company Directors

10.1 Introduction

Company directors are nominated persons elected by the members to manage the company on their behalf. The directors of the company are collectively known as the 'board of directors'. Every company must have at least two directors but there is no maximum number of directors which a company must have. It is important to note that the Memorandum and Articles of Association may, however, restrict the number of directors which the management company may have.

10.2 Who are the first directors of the management company?

In general, the person establishing the company nominates the first directors of the company. In the case of a management company which is established by the developer, it is they who will usually nominate the members and the first directors of the company. Typically, the developer or some of their staff, associates or solicitor may fill these roles. When the company is established, a register setting out the contact details of directors must be submitted to the CRO. In addition, the names of the first directors will generally be stated in the articles of association.

10.3 Role and responsibilities of directors

Many of the specific functions and powers a director will have will be set out in the company's articles of association. In general, the articles will set out that the directors manage the company and make decisions on its behalf, subject to the terms of the articles of association and directions given by the members in a general meeting. With regard to management companies, the key tasks directors will perform are deciding service provision and the service charge level. The directors will also be responsible for ensuring that the company complies with all relevant company law legislation and maintains all company records and registers.

10.3.1 Main Duties of directors

Some of the main duties of directors include:

- » Filing documents relating to the company's activities with the CRO;
- » Convening general meetings of the company;
- » Maintaining proper books of account;
- » Preparing annual accounts;
- » Arranging for an annual audit of the company's accounts to be performed;
- » Making agreements on behalf of the management company, for example employing service providers such as managing agents;
- » Approving the annual budget.

The directors are also responsible for ensuring that the following documentation is maintained:

- » Register of directors;
- » Register of directors' and secretaries' interests;
- » Register of debenture holders (Those persons/companies whom the management company owes money to);
- » Minute books;
- » Directors' service contracts.

10.3.2 Directors common law duties

There are a number of specific legal obligations which directors must abide by. For example, directors must carry out their functions with due care, skill and diligence and act in good faith and in the interests of the company. Additionally, directors are not allowed to make an undisclosed profit from their position and must account for any profit which they derive from their position as a director. A brief summary of director's duties under common law is set out below.

Act in good faith and in the company's interest

- » Directors must honestly believe in their decisions;
- » Their interest must be the company's and members' interest, not the interest of particular member(s);
- » They must not abuse the powers vested in them.

Be open and transparent

- » Directors may not make an undisclosed profit from acting as a director;
- » Directors must minimise potential conflicts. Executive directors in particular should not be involved with a competitor

Act with due care, skill and diligence

- » This is related to individual director's knowledge and experience
- » Directors are liable for loss resulting from negligence

10.3.2.1 Directors duty of disclosure

Directors must disclose the following information:

- » Their name, date of birth, address, nationality, occupation and details of any other directorships in the register of directors and secretaries;
- » Interests in shares of the company or related companies in the register of directors' interests;
- » Directors' service contracts with the company must

be made available for inspection by any member of the company;

- » Where a director has in any way an interest in a contract or proposed contract with the company, they are required to declare the nature of that interest at a meeting of the directors.

10.3.3 Types of director

In addition to the nominated company director named in the company's incorporation documents, the following are other legal categories of company director:

Shadow Directors

- » As well as formally appointed directors, a person, other than a professional adviser, who exerts an influence or with whose instructions the directors of the company normally comply is known as a 'shadow director'. A shadow director has many of the legal responsibilities of a director.

Alternate Directors

- » A person nominated by a director to act in their absence is known as an alternate director. The agreement of a majority of the directors is required for such a nominee to become an alternate director.

De Facto Directors

- » A person who has not been validly appointed or who is disqualified but in effect occupies the position of, and acts as if they were a director is known as a de-facto director. Such persons, although they may not have been validly appointed, also come within the domain of the Companies Acts.

10.4 Who can be a director?

You do not require any formal or specific qualifications to act as a company director. A director is not required to be a member of the company, unless it is provided for in the company's articles of association.

Bodies corporate (i.e. companies), undischarged bankrupts, auditors of the company and disqualified persons (i.e. a person disqualified by a Court from acting as a company director) are not allowed to be company directors. Unless there are exceptional circumstances, at least one of the directors of a company must be resident in the State. In addition, a person cannot be a director or shadow director of more than 25 companies at any one time.

10.5 How do owners become the directors of the management company?

The memorandum and articles of association will set out the rules and procedures with regard to the appointment of directors. In a new development, even though the individual unit owners may have become members of the management company following purchase of their unit, they may not be involved in selecting who the directors of the management company in its initial phase are. This is because the developer when establishing the company will have nominated the directors. As set out earlier, after the developer sells and transfers ownership of the common areas, the developer's nominees as directors will generally resign from their roles as directors.

To facilitate the smooth transfer of control of the management company to the unit owners, the developer controlled management company should arrange for directors nominated by the developer to resign from the board of the management company. When the developer nominated directors have resigned, owner members of the management company should volunteer to fill the role of directors. This should generally be done at an Annual General Meeting (AGM) of the management company. At this point, the directors nominated by the owners will assume responsibility for the administration of the management company. Unit owners should be advised by the developer controlled management company of this step in advance (with at least 8 weeks notice), in order to allow sufficient time to identify appropriate directors drawn from amongst their rank.

Where a developer nominated director wishes to remain in place on the board of directors of the management company post transfer to the unit owners any such arrangement should be agreed by vote at a meeting of the company.

While the agent can undertake these duties, ultimate responsibility with regard to the companies duties under company law will remain the responsibility of the management company.

10.6 Information and assistance for persons wishing to become directors

You should be aware that agreeing to become a director means that you take on a number of roles and responsibilities as outlined above. Agreeing to act as a director can be rewarding but it is very important that every person appointed as a company director should on or before appointment, be aware of the legal responsibilities and obligations attached to the position.

While the information in this section summarises some of the primary duties of directors, more detailed information may be obtained from the Office of the Director of Corporate Enforcement at: www.odce.ie

10.6.1 Managing agents and the board of directors

Depending on the contract between the management company and the managing agent, the agent may assist the work of the board of directors by providing for example the following services:

- » Giving the board advice about management policy;
- » Going to board/AGM meetings, recording the minutes and making them available to the board/owners;
- » Giving a report on financial, maintenance and legal matters;
- » Reporting on communications from owners and other residents.

Where the directors engage the services of the agent in this regard, the contract should clearly set out the obligations and responsibilities of both the agent and the management company. The directors should inform the owners of the specific duties to be provided by the agent in this respect.

10.7 Can directors be removed from their position?

Directors can be removed from their position as directors by an ordinary resolution, i.e. a vote of 51% or more of the members in a general meeting. A notice of 28 days must be given of the intention to hold a meeting for the purposes of removing a director. The articles of association may contain specific rules and procedures in relation to the removal of directors and it is important that you are aware of what they specify. Where a director is appointed for life by the memorandum or articles of association, such a director can only be removed if the correct procedure for the alteration of the memorandum or articles is followed.

10.8 Officers of management companies insurance

It is important to know that directors & officers of management companies, can be held personally liable for the failure to perform their duties and therefore be made responsible for any damages and/or legal costs incurred, thereby putting their own personal assets at risk. Insurance cover is available to protect the directors & officers of management companies for their potential exposure to claims brought against them. This issue is covered in more detail in section 16.

11

Company Secretary

11.1 Introduction

All companies must appoint a company secretary. In general, the role of a secretary is administrative and persons do not require any specific qualifications to undertake the role. The company secretary is obliged to ensure that the company complies with company law and abides by the rules set out in the articles of association.

11.2 What does the company secretary do?

It is permissible for the secretary to be one of the directors of the company. In relation to management companies the most common tasks they perform may include:

- » Providing administrative support and guidance to the board of directors;
- » Ensuring that the board's decisions and instructions are properly carried out and communicated;
- » Ensuring that the company complies with statutory requirements and that statutory forms are completed and filed on time in the CRO;
- » Ensuring that those entitled to do so may inspect company records;
- » Supplying a copy of the company's accounts to every person who is entitled to receive notice of general meetings;
- » Convening meetings of members;
- » Maintaining the statutory registers and minute books.
- » Recording the minutes of meetings.

11.3 What are Minutes?

Minutes are the written record of a meeting. Companies must keep minute books in which a written record of the proceedings of general, directors and annual general meetings are kept. The books containing the minutes of meetings must be kept at the company's registered office and available to any member of the company to inspect.

11.3.1 What should the minutes record?

There is no standard format or type of information that should be recorded in the minutes. However, the ODCE have set out guidance outlining the type of information and details that should be considered being recorded by the company secretary when taking the minutes of meetings. These include:

- » Date, time and location of the meeting;
- » Names of the directors, secretary and person chairing the meeting;
- » Names of other persons present (at the 'top table') and the capacity in which they attended e.g. the company's auditors, managing agent etc.;
- » Names of other persons present and the capacity in which they are in attendance;
- » Persons from whom 'apologies' for inability to attend have been received;
- » Approval of minutes of previous meeting and any corrections requested;
- » Details of any documents or papers tabled for consideration, including the title and author of any such documents (generally these documents should be circulated in advance of the meeting). Documents that will form the basis of decisions (resolutions) at the meeting, such as the financial statements and auditor's report (where applicable), must be circulated

to the members before the meeting to afford them an opportunity to study them;

- » Details of proposals put for vote, key points of same, members and directors views on the proposals, the names of the persons proposing and seconding (supporting) the proposals and the decision taken;
- » An account of the views expressed by each person making a contribution to the discussion should be recorded, including for example, questions put to the board from the floor by members and the responses given. While the minutes may summarise the contributions made, the summary should accurately reflect the substance of the contributions made. Where a contributor specifically requests that their contribution be recorded in the minutes e.g. where a disagreement arises, particular care should be taken to ensure that the minutes accurately reflect both parties contribution;
- » Details of any conflicts of interest declared by directors and whether, for example, they refrained from participating in any discussions, abstained from any vote taken or absented themselves from the meeting for any discussions on the matter;
- » The results of any vote(s) taken; (as declared by the Chairperson) and whether the decision was taken by a show of hands or by poll;
- » Details of the resolutions passed i.e. formal decisions made following a vote;
- » Details of any delegations of authority by the board of directors to company members e.g. the fact that the board authorised a member to sign cheques on the company's behalf should be recorded;
- » Signature of the chairman of the board certifying that the recorded minutes are an accurate reflection of the proceedings;
- » The agenda, as circulated to those attending the meeting should be appended to the minutes (each item on the agenda should be sequentially numbered for ease of reference).

11.4 How does somebody resign as a company officer e.g. director/secretary?

If you wish to resign as either a company director or secretary you must notify the company in writing of your decision. You should try to give the company as much notice of your decision as you can to help ensure there is sufficient time for the company to appoint a new director or secretary. The company must also inform the CRO within 14 days of the change of director occurring. Where there has been continuing failure by a company to inform the CRO that you have ceased to be a director or secretary, there is another procedure which enables you to do so.

Please note that there are specific procedures in place to deal with this process. Resigning officers and those continuing to serve as directors should contact the CRO directly for advice in this regard.

12

Annual General Meetings

12.1 Introduction

With the exception of single member companies, all companies must hold an annual general meeting (AGM) each calendar year. No more than 15 months should elapse between each meeting. The AGM is held to inform the members of the activities and plans (financial and operational) of the company. The obligation to call an AGM rests on the company acting through its directors and secretary. Where an AGM is not held, both the company and its officers commit an offence under company law. The details set out in this section only provide an overview of the process and procedures associated with the company's AGM. More detailed information may be obtained from the Office of the Director of Corporate Enforcement at: www.odce.ie

12.2 Why are AGMs important?

The purpose of the AGM is review the company's performance and plans for the future. The most fundamental privilege associated with membership of a management company is a right to participate in its governance and decision-making. The AGM provides members with the opportunity to do this. At the AGM some members may agree to serve on the board of directors of the company. As stated earlier the board will run the company on behalf of members and in the case of management companies, will make the decisions for that year about the development.

Whether or not you are on the board of directors, once you buy a unit and become a member of the management company you have an interest in how the company is run. Key decisions in relation to how the management company is being run may be taken at the AGM and it is important that you attend and have your say.

12.3 What issues are discussed at an AGM?

A wide range of issues may be raised and discussed at an AGM and it is not possible to provide an exhaustive list of the type of issues which may be raised or form part of the agenda. The agenda is essentially a list of the issues which will be discussed at the meeting. If there are particular issues which you wish to raise at the AGM you should advise the company secretary in advance so that your issues are included on the agenda. Issues which may form the typical management company agenda at AGMs are:

- » Minutes of the previous Annual General Meeting;
- » Approval of the company's accounts;
- » Directors' and auditors reports;
- » Election of directors in place of those retiring;
- » Discussion of plans and budgets for the following year;
- » Appointment of the company secretary and directors;
- » Discussion and review the performance of any contractors especially managing agent;
- » Discussion of major common area maintenance and service charges contributions;
- » Discussion on general concerns of members or directors;
- » Discussion and agreement (by vote) of decisions in relation to how the company is run;
- » Appointment or reappointment of company auditors/legal advisor/managing agent;
- » Voting on Changes to the Articles of Association if appropriate.

Before the AGM is held each year, the directors should prepare and circulate a copy of the management company's audited accounts for the previous year to the members. Typically, the accounts will be presented by the directors and discussed by the members as an agenda item at the AGM. The audited accounts must also be lodged with the Companies Registration Office.

12.4 What is a Directors' Report?

As well as the company's financial statements, (see section 13) under company law, the directors must present a report on the state of the company's affairs at the AGM. The purpose of the directors' report is to provide the members with comprehensive and intelligible information on the company's affairs. The report should outline:

- » Any important events affecting the company which have occurred since the year end;
- » An indication of likely future developments in the business of the company;
- » A fair review of the activities of company the during the financial year;
- » The steps that the directors have taken to ensure compliance with the requirement for the company to maintain proper books of account;
- » The exact location of the books of account.

12.5 Information provision by the directors at the AGM

There is no limit to the amount of information which can be included in the directors' report. Company law sets out only the minimum amounts of information to be disclosed and there is nothing to prevent the directors from disclosing as much information in their report as they see fit. In the interest of openness and transparency as much information as possible on the affairs of the management company should be contained in the directors' report. This information should be presented in a plain and intelligible manner that all members can understand. Directors should ensure they provide enough information to ensure members understand how the company is performing and why certain decisions have been taken.

While there are a number of standard reporting obligations on companies under company law, management companies are advised to provide as much detailed information (e.g. income and expenditure breakdowns) as possible on a regular basis and in a format that is easy to understand. This may help alleviate a lot of member concerns particularly with regard to how the service charges budget is being spent and ascertaining value for money. It is also open to the members to request that the company's articles of association specify that the directors' report contain specific information on issues they wish to be formally updated on at least on an annual basis.

12.6 How is an AGM called and held?

The Articles of Association should set out the process under which the AGM will be called and how members will be given notice that the AGM will take place. Under company law, members must be given sufficient notice of when the AGM will be held (at least 21 days). The notice should specify the place, date and time of the meeting. The notice should also contain a clear outline of the matters to be dealt with at the meeting. Members should also receive information in relation to both the company's activities and its finances. Where an AGM is overdue or has not been held, a company member can request the Office of the Director of Corporate Enforcement to direct that an AGM be held.

12.7 How are AGMs run?

To be valid, a meeting must be properly convened by notice as set out above and a quorum must be present. A quorum is the minimum number of members that need to be present for a meeting to be formally held. No business should take place at an AGM unless a quorum of members is present at the time when the meeting starts. A quorum is generally fixed at two members in the case of a private company and three in the case of a public company.

The AGM must be presided over by a chairperson, the chairperson is usually one of the directors and minutes must be taken. Third parties such as the managing agent, company solicitor and auditor may also attend the meeting if invited by the directors.

12.8 How are decisions made at AGMs?

Decisions by the members at AGMs (e.g. approval of the company's financial statements) are made by what is called an ordinary resolution. This involves a proposal being made (for example "I propose that the members approve the company's financial statements") and members voting on the proposed resolution. To be passed, ordinary resolutions generally need the support of a simple majority i.e. a majority in excess of 50% of those members voting. All resolutions must be passed in accordance with company law and the company's articles of association.

Special resolutions are used to conduct any special business at AGMs, such as the alteration of the articles of association. For special resolutions, a 75% majority is required. The company must forward such special resolutions and certain other significant resolutions to the CRO.

12.8.1 Voting at AGMs

The standard Articles of Association provide that resolutions be decided by a show of hands and a declaration by the chairperson that a resolution has been carried or lost. However you should be aware that the standard articles allow a poll (vote) to be demanded by:

- » The chairperson of the meeting;
- » At least 3 members in person or in proxy 13, or;
- » Any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having a right to vote at the meeting.

12.8.2 What voting rights do members have at the AGM?

The voting rights that you will have as a member, will be set out in the company's article of association and as outlined earlier, it is essential that you are aware of what your rights in this regard are. Because of the flexibility management companies have with regard to drafting their operating rules it is important that your solicitor examines the wording in the Memorandum and Articles of Association to ensure that the terms are fair and acceptable to you as an owner/member. For example, the articles of association might state that owners will have 1 vote each at meetings of the management company, while directors will each have 50 votes. This may mean that the directors may be able to outvote any proposals made by owner members and can be very problematic as the owners requests may not always be accepted if they are outvoted at the AGM.

12.9 Proxies

If you are unable to attend the AGM, you should be aware that it might be possible to have somebody (e.g. a friend, family member, solicitor) attend the meeting on your behalf to represent your views. In general, any member entitled to vote at a meeting can appoint a 'proxy'. A proxy is a person nominated by a member to attend the meeting and to speak and vote on their behalf. Typically, under the standard articles of association:

- » The proxy must be nominated in writing and the nomination must be signed by the member;
- » The appointment must be furnished to the company at least 48 hours prior to the meeting.

It is important to check the company's Articles of Association to see if there are any specific rules with regard to the use of proxies.

12.10 What are Extraordinary General Meetings (EGMs)?

EGMs are all general meetings of the company other than the AGM. The Articles will generally outline the process by which an EGM may be held. If the company is a guarantee company not having a share capital, the notice cannot be shorter than 14 days. However, meetings may be convened at shorter notice, only if so agreed by both the company's auditors and by all the members entitled to attend and vote at the meeting. For example, the articles may state that directors may call an EGM at their own discretion, or that the directors cannot make certain decisions without the approval of members.

Under company law there are a number of circumstances where an EGM must be held regardless of what is outlined in the articles of association. In summary, EGMS must be held under the following circumstances:

- » Members representing not less than 10% of the voting rights of the company (known as requisitionists), can request that the directors call and hold an EGM by submitting a written request outlining the purpose of the EGM to the company's registered office. The directors are obliged to call an EGM within 21 days of request and the EGM must be held within two months. If the directors fail to call the EGM, the requisitionists, or any of them representing over half the voting rights of the requisitionists may convene a meeting which must be held within three months of the date of the original request;
- » Where it is not practical to call an EGM or hold it in accordance with the articles of association or the Companies Acts, any member entitled to vote at the meeting may apply to the High Court, and the Court may order that such a meeting be held;
- » Where the company's net assets (i.e. total assets less total liabilities) have fallen to 50% or less of its called-up share capital the directors must also convene an EGM.

13

Management Company Financial Records

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13.1 Introduction

It is essential that the management company keeps comprehensive, accurate and up-to-date financial records. The main purpose of financial records is to ensure that the company is able to monitor and account for how much it is spending, how much it is owed and how much money it has at its disposal etc. As a company the management company will also have legal requirements in relation to the type of financial records that it is required to maintain under company law to maintain. The details set out in this section only provide an overview of the process and procedures associated with the company's financial records. More detailed information on companies financial reporting requirements may be obtained from the CRO at www.cro.ie.

13.2 Requirement to keep financial records

The management company must once every year file an Annual Return with the CRO. The Annual Return contains certain fundamental information about the company and its financial activities. All companies must file an Annual Return and all have an individual return date. Up-to-date financial statements in relation to the company must usually accompany the annual return. Under company law, companies are legally required to account for their financial activities and transactions by keeping financial records. These are used to prepare accounts and statements which must provide a true and fair view of the company's

financial affairs. When submitting their accounts to the CRO, companies are required to disclose details of their accounts when they hold their Annual General Meeting (AGM).

It is therefore very important that a system is set up which allows all associated documents such as invoices, receipts, contracts, bank statements etc. to be carefully retained. The directors are free to decide how the financial information is recorded e.g. in paper journals or electronically, so long as the records are “readily accessible and readily convertible into written form”. The ODCE state that companies and their directors are strongly advised to seek professional accountancy advice when setting up their accounting and internal control systems to ensure that the systems implemented enable the company and its directors to comply with their legal requirements in this regard. This advice should always be borne in mind by directors.

13.3 Who is responsible for keeping the financial records?

Under company law, the obligation to keep and maintain proper books of account rests with the company itself. Failure to maintain proper financial records is an offence for which the company and the directors may be prosecuted. The financial records must be kept for six years after the latest date to which the record relates. However, companies are free to keep their records for periods longer than six years if they wish. Almost all management companies will have their accounts prepared with the assistance of professional accountants who may also act as auditors to the company.

13.4 Ownership of the financial records

The accounting records must always remain the property of the management company and be freely available for inspection by the directors, secretary and the management company’s auditor. It is important to note that whoever is appointed to maintain the management company’s financial records does not own these records. For example, managing agents may offer to keep the financial records on the

company’s behalf as part of their service. In the event that the management company decides not to renew its contract with one managing agent, it is important that it should be able to supply its new managing agent with its financial records as well as all the records relating to such matters as inspections of the lifts in the complex, the company’s insurance arrangements, etc.

13.5 Who is entitled to view the company’s financial records?

Under company law, the company’s financial records must be kept in a location where they are freely available for inspection by the directors, secretary and auditors. It is important to know that while the company’s accounts should be presented to the members at the AGM, the members of a company do not have a legal right to examine all of the company’s financial records e.g. invoices, receipts etc. However, management companies are free to permit a member to do so. Requests to view the financial records should be facilitated informally by directors as and when requested, or they can be formalised by inserting a clause in the company’s articles of association under which members have the right to examine the financial records.

13.6 Basic form of financial records

At the most basic level, management companies should keep a record of receipts and payments. In general, the minimum details which should be recorded as regards payments are the:

- » Date of payment;
- » Amount paid (inclusive and exclusive of VAT);
- » Cheque/draft number;
- » Name of individual/company being paid.

The receipts book should record the details of all money received by the company. In general, the minimum details which should be recorded are the:

- » Date of receipt of payment;
- » Amount received;
- » Amounts lodged to the bank, showing clearly the composition of any lodgement where a lodgement contains more than one receipt;
- » Name of individual/company making the payment.

13.7 What type of information should the company's financial records contain?

Under Company Law a company's accounting records must:

- » Correctly record and explain the transactions of the company, i.e. records of services provided and relevant invoices/ payment receipts;
- » Be kept on a "continuous and consistent basis", with all entries made in a timely manner, and consistent from one year to the next;
- » Record all money received and spent by the company. Each record should show the date and amount of money spent or received and details of the transaction. In general, these details will consist of at least two elements: (i) the name of the person or business from whom the money was received or to whom it was paid and (ii) the reason or purpose of the transaction;
- » Include details of all the assets and liabilities of the company;
- » Include a record of all services provided and of all the invoices relating to these services;
- » Enable the financial position of the company to be determined at any time with reasonable accuracy;
- » Enable the directors to ensure that the annual accounts of the company comply with company law;
- » Allow the annual accounts of the company to be readily and properly audited.

13.8 What sort of financial information must be presented to the CRO/members?

After the company's financial records have been audited (see section 13.10) the directors must present the company members with the following accounts and reports at the AGM:

- » A profit and loss account (or an income and expenditure account if the company is not trading for profit). This summarises the main categories of company income and expenditure and sets out the profit the company has earned after all the expenses incurred in running the business. An income and expenditure account is the equivalent of the Profit and Loss Account in a business not run for profit. When income exceeds expenditure, there is a surplus and when expenditure exceeds income there is a deficit;
- » A balance sheet. This is a list of the assets (the resources owned by the company and liabilities (the amount of money the company owes to suppliers/ debtors of a company at a particular point in time);
- » A directors' report. As set out in section 12.4, this is a report prepared by the directors disclosing certain statutory and non-statutory requirements of the company's activities and financial affairs during the year. The report must be signed on behalf of the directors by two directors;
- » An auditors' report. Setting out the auditor's opinion on the accuracy of the company's financial statements.

13.9 How do you know if the financial records are being correctly maintained?

An audit is an independent professional opinion as to whether the financial statements of a company, as presented by the directors, give a true and fair view of its profit or loss and state of affairs for a particular financial period. The obligation on companies to have an annual statutory audit conducted comes from the Companies Acts.

13.10 What is the role of the company's auditor?

An auditor is an accountant who holds a specific licence to conduct examinations/investigations of a company's financial statements. These investigations are known as audits. Auditors examine the accounts and financial records of the company and prepare a report for the company's members. The auditor is generally appointed by the directors and reappointed at every AGM of the company. To ensure that the auditor's assessment is impartial, an auditor must be independent of the company and therefore should not be an officer or employee of the company or any associated company. The directors must make available all accounting records and all other records and related information, including minutes of all directors and members meetings to the auditors.

The auditor's primary task is to report to the members of the company their opinion on the company's financial statements. The auditors report will say if the company's accounts have been prepared in accordance with Company Law, accounting standards and if they give 'a true and fair view' of the company's financial affairs. The auditors' report must be read at the AGM and should be made available to every member of the company. The auditors are also entitled to receive notice of, and attend, general meetings of the company.

13.10.1 What is meant by the term 'True and Fair view'?

While the term 'true and fair view' is not defined in the Companies Acts, the ODCE state that in general, financial statements are considered to give a true and fair view where they:

- » Have been prepared in accordance with the Companies Acts, and accounting standards;
- » Fairly reflect the circumstances of the company's business;
- » Reflect the commercial effect of the underlying transactions and balances and not merely their legal form;

- » State the assets, liabilities and profits (or losses) of the company as arrived at in accordance with accounting policies required by company law and by the relevant accounting standards;
- » Consistently apply those accounting policies i.e. from year to year in order that the financial statements from one year to the next are comparable.

13.10.2 What is in an auditors' report?

In relation to management companies, the auditors' report must state whether, in their opinion:

- » The company has maintained proper books of account;
- » The financial statements have been properly prepared in accordance with the provisions of the Companies Acts and give a true and fair view of the company's affairs and of its profit (or loss);
- » There has been a serious loss of capital requiring the convening of an extraordinary general meeting;
- » The information contained in the directors' report is consistent with the financial statements;
- » They have obtained all the information and explanations they considered necessary for the purposes of the audit;
- » The company's balance sheet and profit and loss account are in agreement with the books of account.

13.10.3 What should you look for in the audited accounts?

When you receive the company's audited accounts, you should look at the auditor's report and check what they have to say about the books of account kept by the company as per the previous section. Any shortcomings identified in the auditor's report should be raised and discussed at the company's AGM. Auditors do not judge the appropriateness of the company's actions or activities. Where the auditors are unable to report positively on any of the above, they may 'qualify' their audit report in what is known as a qualified auditors report.

13.10.4 What is a Qualified Auditors' Report?

A qualified audit report can take two forms:

1. 'A disclaimer of opinion'. This is where the auditors state that they are unable to form an opinion as to whether the financial statements give a true and fair view. A disclaimer of opinion will arise where the scope of the auditors' work has been limited in some way e.g. they have been unable to gain access to all of the books and records;
2. An 'adverse opinion'. This is where the auditors state that the financial statements do not give a true and fair view. An adverse opinion will be given where the auditors are in disagreement with the financial statements and the directors are not prepared to amend them to reflect what the auditor considers to be a true and fair view.

Where the auditors believe that the company is breaking, or has not met, its obligations to maintain proper books of account, they are obliged to serve a notice on the company informing it of that opinion. If within 7 days of notice, the directors fail to take the necessary steps to ensure that proper books of account are maintained, the auditors are required to notify this failure to the Companies Registration Office, who in turn will notify the Office of the Director of Corporate Enforcement.

13.11 Filing of Annual Return with the Companies Registration Office

As stated earlier, the management company must once every year, file an Annual Return with the Companies Registration Office (CRO). The Annual Return contains certain fundamental information about the company and its financial activities. Companies and officers, who do not file their return in compliance with the Companies Acts are liable to enforcement measures from the CRO. For example, companies that miss their deadline for submitting their return will be fined a late payment penalty. When drafting their annual accounts and filing their Annual Return all

companies must follow certain standards, formats and disclose certain information.

Managing agents may offer to file the Annual Return on the company's behalf as part of their service. Where the Agent is responsible for filing the returns to the CRO, the contact between the Agent and the management company should clearly state that the accounting and financial records are and remain the property of the management company and must be freely available for inspection by the directors, secretary and management company's auditor. The contract should also outline where late payment fees are imposed by the CRO for non-compliance that they should not be borne by the management company where it is not responsible for the delay. Similarly, where the developer or their nominated directors are in control of the management company, members should not be liable for any costs arising from returns not made to the satisfaction of the CRO.

The accounts should be provided in due time to the directors for examination and approval and the directors shall return them in sufficient time to allow for the convening of the AGM and for filing the accounts with the CRO.

The CRO provide detailed information on the process and procedures involved in submitting an Annual Return and this guidance is available online at www.cro.ie

13.11.1 Other company information which must be recorded with the CRO

As well as the Annual Return, directors are also legally obliged to ensure that certain other documents are filed with the CRO. The most common include:

- » Change of address of the company's registered office;
- » Notice of increase in nominal (authorised) capital;
- » Change of director and/or secretary or of their particulars;
- » Declaration that a person has ceased to be a director or secretary;
- » Notice that a person holding the office of director or secretary has died;

- » Nomination of a new annual return date;
- » Notification of the creation of a mortgage or charge;
- » Memorandum of satisfaction of charge.

13.12 Can members request more detailed information on the company's accounts?

It is important to note that there is no limit to the information a company may decide to provide to its members. The information outlined in the previous sections sets out only the minimum amount of information that must be presented to the members. You can ask your management company to present supplementary information at the AGM as is necessary to enable you and the other members to get a really good sense of where the company stands financially. In particular, directors should consider providing detailed income and expenditure information in relation to service charges, sinking funds, unpaid service charges, insurance etc.

Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency has published a document to illustrate a typical Report and Financial Statements. These draft Financial Statements are available at www.consumerproperty.ie



Section 14 & 15

14. Management Company Budgets

15. Management Company Bank Accounts

14

Management Company Budgets

14.1 Introduction

The management company's budget is essentially a forecast of what the company expects its income and expenditure should be over a given period of time, usually a year. The management company's income should generally consist of monies paid by owners as service charges; any balance carried over from the previous year's budget together with any interest arising from the company's bank accounts. Expenditure is largely made up of the costs of services to manage and maintain the common areas and is met by the service charge paid by all members and in broad terms.

14.2 What is the purpose of the management company budget?

A well-prepared budget should identify the scope and estimated cost of the priority tasks that the management company plans to implement over the budget period. It is vital that the budget is set at a level that ensures both day-to-day and future expenditure items are considered. While the previous years accounts and budget should always be examined when setting out the budget, directors should not assume that all items of expenditure in the previous year are necessary or should cost the same again (price increases due to inflation should always be considered) and in addition it may be possible for the management company to make savings.

14.3 Who should prepare the budget?

An important task of management company directors is approving the budget. In developing a budget, directors may decide to use managing agents to provide advice. However, it is important to remember that while the managing agent can help prepare and recommend the budget on the directors/management company's behalf, the directors must always approve the budget and are not obliged to accept any proposals from the agent in this regard.

14.4 How is the budget prepared?

In drawing up a budget, directors should keep costs under review and where appropriate seek competitive quotations for existing or new services. As well as price, directors should consider other elements such as quality of workmanship, reputation of contractors, established professional relationship etc when undertaking this task.

Directors should use the budget process as an opportunity to evaluate the quality and effectiveness of last year's services. They should review the budget at regular intervals (e.g. quarterly, half-yearly) to examine progress against plans and identify if there are differences between budgeted and actual income and expenditure.

Where significant differences are evident, the directors should take corrective actions and inform the owners of any potential impact on service quality or service charge levels. While some expenditure items may always recur from one year to the next, (e.g. window cleaning, waste disposal) and are generally known as current expenditure items, the directors should also consider any new or additional spending which may be needed in the year or years ahead.

As set out section 4, the budget should also ensure that enough money is collected in the service charge to provide for an adequate sinking fund to pay for longer term or capital expenditure items such as lift replacement or re-carpeting.

Transparency in setting the budget and a reasonable process of consultation with members can help alleviate a lot of member concerns, particularly, with regard to how

the service charges budget is being spent and ascertaining value for money. A transparent budget process enables the performance of the management company's activities to be monitored and understood by all of the members.

As company law requires that minutes be kept of directors' meetings, it is important that where an important decision such as agreeing and approving the management company's budget is being made that the directors keep a record i.e. take minutes of decisions and be able to justify the basis on which the budget was approved. It is advisable that the directors convene a meeting of the company to explain the rationale behind the proposed budget and provide owners with as much information as possible on the services that will be provided and how much they will cost. Such a meeting also provides owners with the opportunity to give their views on the proposed expenditure for the year.

14.4.1 Considerations when setting the management company budget

The following are some considerations for directors when preparing a budget:

- » Examine the previous years accounts to establish the company's current financial situation and also to see if the company ended the financial year with a positive or negative balance;
- » Examine the previous years budget compared with actual expenditure;
- » The new budget should be compared with the previous year's actual expenditure;
- » When estimating future costs, reference should be made to the previous contract price, market price, inflation rate and quotations from contractors. Contact all contractors to see if they can give you an idea of how much their services are anticipated to increase in pricing for the coming year;
- » All previous expenditure items should be reviewed and new items considered;
- » A budget deficit should be avoided;

- » Owners should be consulted, particularly if a major increase in expenditure is planned;
- » The basis for making budgetary decisions should be recorded as minutes to account for any new projects or significant variations between the previous years budget as directors may be required to answer budget enquiries from owners;
- » Know when bills are due and approximately how much they are expected to be, bearing in mind any outstanding debts that the company may have or money that may be owed to the company;
- » The sinking fund level should be reviewed and not be used to finance day-to-day expenditure.

14.5 Considerations when presenting the budget at the AGM

As developing a budget may take some time, the board of directors should set and agree the budget in advance of the AGM. The directors approved budget for the year should, where possible, be issued to the members in advance of the AGM. The directors should explain their rationale in approving the budget and provide clear and precise information in plain English as to the proposed level of income and expenditure outlined in the budget and to explain any discrepancies or major differences with previous years services or service charge level.

At a minimum, directors should consider providing owners with:

- » A comprehensive level of detail on the company's proposed income and expenditure to enable owners to fully understand what services they can expect to receive and the cost of these services;
- » Explanations of significant costs/savings and variances from the previous year's budget/accounts;
- » Supplementary information on core matters critical to the management company's finances (e.g. sinking fund level, debts owed by the company, monies owed to the company by creditors etc.);

- » Separately identified managing agent costs;
- » A statement detailing how any income the management company holds (e.g. interest accruing in the sinking fund) is dealt with;
- » The achieved and/or targeted measures of improved management performance (e.g. successes in delivering improved quality services and greater value for money).

The directors should consider providing detailed income and expenditure information in relation to service charges. Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency has developed an interactive document which can be used to summarise and outline the typical categories of company income and expenditure. A management company may adopt this document to help owners understand how the service charge money is being spent. This document is available at: www.consumerproperty.ie

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Management Company Bank Accounts

15.1 Introduction

As the monies paid by owners in their service charges can be substantial most management companies opt to manage their finances via bank accounts. Typically, the developer will have established the management company's bank accounts when the company is first set up. There may be instances for example, where the directors of the company wish to establish a separate bank account for a sinking fund if none is already in place, switch accounts between banks, or change the persons authorised to access the accounts. In such instances it may be necessary for the directors to review current procedure and consider how the management company's finances can be best maintained and managed.

15.2 Considerations before opening a bank account

It is considered good practice for the directors to open and operate separate bank accounts for service charges (current account) and the sinking fund (interest bearing account). These accounts should be operated in the name of the management company and not any named individual. The management company's finances should not be administered through any individual's personal bank account.

Banks, building societies, credit unions and An Post provide deposit and current accounts options.

There are many types of accounts available and the financial institutions offer various options in relation to these accounts. In deciding what sort of account would suit the company best you should think about the way the company will use the account.

It is advisable to speak to the financial institutions about what the company will need and you should shop around for the best interest rates and fees and decide which suits your company's purposes and needs best. The Financial Regulator provides independent information on bank accounts at www.itsyourmoney.ie.

15.2.1 Operation of the bank account

The directors should, in the first instance consider who currently has authority to access the management company's accounts and assess how well the current process is working. The directors may wish to authorise the bank to allow the managing agent to use the management company's service charges account to pay day to day bills in relation to services provided. Any arrangements in this regard should be clearly set out in writing between the management company and the agent.

The directors should also consider what safeguards they wish to put in place as regards lodgements and withdrawals from the company's bank account. Use of the company's bank accounts should be clearly governed by establishing:

- » A limit to the amount that the directors or any authorised person such as a managing agent can withdraw for goods or services without convening (calling/organising) a directors or management company meeting (e.g. no one withdrawal may exceed 50% of the annual budget);
- » If the bank should act on the signature of any one of the directors or should cheques (perhaps above a certain limit) have to be co-signed by at least two or more directors?
- » If the managing agent is to be authorised for withdrawals from the accounts, a financial limit on the maximum amount which can be withdrawn by the agent should be established;

- » Who is to have custody of the management company's chequebooks, deposit books, bank statements and where will they be kept?

15.3 General procedure when opening a bank account

A limited company needs to pass a resolution of the board of directors to open a bank account. In summary, some of the key steps the directors may be required to take when opening a bank account for the management company are:

- » Hold a meeting of the directors of the company to decide the criteria on which the bank account will operate;
- » Decide who is authorised to sign cheques on behalf of the company, and how often the company wishes to receive statements;
- » Request from the bank a bank mandate form. This authorises the bank to carry out the instructions of the directors regarding the operation of the account;
- » Complete and return the mandate form and signatures to the bank;
- » Provide the bank with a copy of the company's Memorandum and Articles of Association and Certificate of Incorporation and details of the company's officers;
- » When the account is being opened, the directors and persons authorised to sign any transactions on the company accounts may need to go to the bank and provide identification such as a passport, and a utility bill;
- » Lodge money into the new account.

To ensure that the company's financial records are accurate and transparent, the company secretary should carefully retain all documents issued by the bank in relation to the operation of the company's account. Bank documents will include for example, bank statements, cheque stubs (which should be properly and fully completed), lodgement slips and any other correspondence from the bank.



Section 16 & 17

- 16. Management Company Insurance**
- 17. Fire safety**

16

Management Company Insurance

16.1 Introduction

There are many different types of insurance policies which you can decide to avail of. Should you purchase insurance, make sure that you understand the terms and conditions of the insurance policy you intend to buy.

The Financial Regulator provides independent information in plain English on the main types of insurance available. This information is available at www.itsyourmoney.ie

16.2 Is my unit insured?

It is your decision to insure your own contents and personal items. Contents are generally deemed to be all property, personal effects, valuables, and clothing in your home. It is important to remember that most insurance policies are on a replacement basis. This means you need to value your belongings based on what they would cost you if you had to replace them as new tomorrow. The best way of valuing your contents is to carry out a regular inventory of all your personal items. In general this type of policy does not cover maintenance as it is specifically designed to cover sudden and unforeseen losses which maintenance is not. In addition, it does not cover faulty or defective workmanship carried out by tradespersons. As with all forms of insurance it is important that you do not underestimate or overestimate the value of the items you wish to insure.

16.3 Is my multi-unit development insured?

Before you buy, your solicitor should contact the management company or managing agent and ask them to include your details and those of your financial institution on the block insurance policy as per your mortgage, and issue an indemnity/interested party letter. You should also look to obtain written confirmation from the management company or managing agent, that the block insurance policy has been renewed. As insurance of the development is important to all owners it should be discussed at the company's AGM every year.

16.4 Mixed developments and insurance

In developments that have a mix of houses, duplexes and apartments, directors will need to check the lease to see if the management company is responsible for insuring all the buildings, as owners of houses may be responsible for arranging their own buildings insurance cover.

16.5 Who is responsible for insuring the multi-unit development?

The management company/directors are responsible for arranging insurance on the multi-unit development. Insurance premiums can be costly and directors need to be well informed before making any decisions regarding the purchase of insurance. Insurance companies rate risks differently and directors should try and get a number of alternative quotations. It is recommended that directors seek independent professional advice to assess what type of insurance is required and ensure that adequate insurance has been obtained.

Directors may decide to contact insurance companies directly to seek advice and quotes or consider employing an insurance broker whose job is to find the most competitive (in terms of both price and cover) insurance policies on their behalf. If you use a broker, ensure that the broker explains each of the quotes obtained in terms of costs, risks, cover and benefits. You should also ask your broker to explain

the reasons why they may be recommending a particular product over others. The broker should be asked to consider the leases under which the units are held to work out what sorts of risks the company needs to be insured against. The directors should review all insurance needs on an annual basis in advance of policy renewal dates and report on any developments in this regard at the AGM.

Some of the typical insurance policies taken out by management companies are:

- » Buildings insurance including Alternative Accommodation and Loss of Rent;
- » Common area contents insurance;
- » Public liability insurance;
- » Employers liability insurance;
- » Directors & Officers liability (Management liability) insurance.

16.6 What is buildings insurance?

Building/Block insurance protects the development against damage caused by unforeseen risks such as fire, flood, burst pipes, malicious damage, theft, and subsidence. When taking out building insurance it is important to note that the sum insured is not the market value of the property. The development should be insured for the cost of rebuilding the property from scratch, including demolition and clearing the site. This cost is known as the reinstatement value. In deciding what insurance will be required and how much the insurance should cover the directors may need to liaise with property managing agents, chartered surveyors and insurance providers. If it is a new development the developer may be able to advise as to what the construction costs of the development were. For older developments it is best practice to have an independent chartered surveyor or quantity surveyor carry out a rebuilding cost valuation on a regular basis. This will provide an estimate of what the total rebuilding costs are likely to be and these costs represent the sum for which the building should be insured. It is possible to calculate an approximate estimate of your

property's reinstatement value by using the Society of Chartered Surveyors guide to house rebuilding insurance. This is available at www.scs.ie. However, bearing in mind the complex construction of some developments a professional opinion is likely to be required.

When taking out insurance cover it is important not to under or over estimate the value of what is being insured. If the directors underinsure the insurance, the company might not pay out enough to cover the cost of repairing or rebuilding. For example, where a building is underinsured by 20% the resulting claim is reduced by 20%. If on the other hand, the building is insured for too much, the premium will be higher than necessary and the management company will not get any extra benefit if it has to claim.

16.7 What is public Liability Insurance?

Public liability insurance protects the management company against the financial risk of being found legally liable to a third party for death or personal injury, loss or damage of property or 'pure economic' loss resulting from negligence or lack of due care on the management company's behalf. Where such a policy is in place anyone who is invited, trespasses or works on the development is covered in the event of accident. Any defects in the development such as faulty paving or broken fittings should be repaired to prevent any potential negligence on behalf of the development, as a claim can only be submitted where it can be shown that there was negligence on the part of the development.

16.8 What is employers liability insurance?

Employers liability insurance covers a company's legal liability for accidental bodily injury to employees or disease contracted by them arising in the course of their employment by the management company.

16.9 What is directors and officers liability insurance?

Directors and officers liability insurance insures the directors and officers against claims which could be made against them in terms of not fulfilling their duties as directors. The directors and officers of a company may be held personally liable for failures on their behalf to comply with legal duties, misleading statements, mismanagement, omissions or negligence. The insurance policy is designed to protect the personal wealth of the directors and officers in such circumstances.

This type of insurance covers officers for their potential exposure to claims brought against them for any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, omission, breach of warranty of authority, libel/slander or any other act committed by the committee members in the course of carrying out their management company activities. The policy might also extend to cover:

- » All past and present directors & officers of the management company;
- » Legal costs incurred in defending claims;
- » Advancement of defence costs;
- » Innocent directors & officers of the management company should one of their colleagues prove dishonest or fail to disclose material circumstances when proposing for insurance cover;
- » Employment practices liability.

16.10 What is professional indemnity insurance?

Professional indemnity insurance is designed to protect firms and their employees against claims which may arise as a result of their professional conduct, neglect, error or omission. If the service provider is a member of a professional or trade association, the association may require them to have professional indemnity insurance. However, the management company should still ask them to verify that they have adequate cover.

16.11 What is public and employers liability insurance?

Where contractors are employed to carry out work in the development, they should always have their own public and employers liability insurance in force and management companies, managing agents or otherwise need to be aware that this is essential and to ask for proof of same. Ensuring that contractors have their own insurance in force before entering the development should reduce the likelihood of the management company being at risk of a claim for injury or otherwise arising out of the contractors negligence.

16.12 How can risk/insurance costs be minimised?

The premium cost paid for insurances is determined primarily by:

- » The management company's damage and liability claims history;
- » The safety standards the management company's has in place.

Claims experience is the list of damage and liability claims that have been recorded against the insurance policy for the development over a five-year period. It is important that the management company is proactive in its approach to handling damage and liability claims and minimising risk.

Some examples of this include:

- » Having an up to date Health and Safety statement in place and reviewed at regular intervals;
- » Carrying out a Health and Safety survey at regular intervals to highlight and minimise potential risks;
- » Requesting that the insurance company carry out a risk management survey to assist in putting together a loss prevention programme;

- » Preparing a preventative maintenance programme to maintain the property and keep it in good repair at all times;
- » Notifying your insurance company immediately following any potential damage or liability claim.

The management company should examine the common areas on a regular basis to ensure that they are as safe as possible. The management company should ask the insurance company what standards of safety, if any, they recognise, and whether discounts are available for achieving those standards. If you employ an insurance broker, they should also be able to advise you on how to reduce your risk profile.

16.13 What should be done in the event of a claim?

Depending on the type of incident, you should take any emergency or urgent action which may be necessary to protect the unit or multi-unit development from further damage or loss. You should immediately contact your insurance provider and management company and liaise with them accordingly. As regards the insurance company, you should provide details of the claim and request a claim form. Depending on the type of claim, your insurer or broker will give you advice on what to do next.

17

Fire safety

17.1 Introduction

Every building structure must comply with certain legal requirements regarding fire safety. In particular, building design must ensure that all persons are able to safely evacuate in the event of fire and allow the fire services to access the premises in order to put the fire out. The information set out in this section is based on existing material published by the Department of the Environment, Heritage and Local Government and is available at www.environ.ie and www.dublin.ie.

For advice and information on fire safety in your unit or multi-unit development, you should always contact the fire services section of your local authority before embarking on any course of action.

17.2 Fire Safety Certificates

With the exception of houses and certain agricultural buildings, developers are legally required to obtain a Fire Safety Certificate before commencing construction. The Fire Safety Certificate sets out the safety requirements to be observed in the design and construction of the building.

The legislation relating to fire safety in such buildings are the Fire Services Acts 2003 and the Building Control Act, 1990 and regulations made under these Acts. In general, developers will employ a Fire Safety Consultant, Architect or Engineer who is familiar with the Building Regulations and the procedure for applying for a Fire Safety Certificate.



Local authorities in their function as building control authorities are responsible for sanctioning and issuing fire safety certificates for developments in their area. A certificate is granted where the local authority is satisfied with the proposed layout and planned build of a building from a fire safety point of view. Under the Fire Services Acts 2003, local authorities can pursue enforcement of fire safety matters including the management of fire safety. The management company should be prepared to facilitate any request by the local authority to inspect common areas or individual units. You can check that your development has a fire safety certificate by contacting the building control section of the local authority.

17.3 Who is responsible for fire safety in multi-unit developments?

Section 18 (2) of the Fire Services Act places a duty on persons in control of buildings which contain apartments to take all reasonable measures to prevent the occurrence of fires and to ensure as far as is reasonably practicable the safety of the occupants in the event of fire occurring on the premises. In many cases these duties may be shared. The building owner, the management company, the caretaker, the owner or tenant of a flat could be the person in control depending on individual circumstances or tenancy agreements. Fire safety management includes the maintenance of all fire safety devices within the building including for example, fire detection and alarm systems, emergency lighting, ventilation systems, fire doors etc. In addition, housekeeping of escape corridors, waste management, building and site access and egress together with fire safety instruction and evacuation plans and drill are necessary.

Those responsible for fire safety should be readily identifiable and relevant contact details should be known to residents and prominently displayed at the development. Should the management company decide to employ their managing agent to assist in the discharge of its fire safety responsibilities then external experts may be required to assist the agent.

17.4 Key principles of fire safety

- » The key principles of fire safety are summarised as follows:
- » Avoidance of outbreaks of fire;
- » Provision of escape routes which are protected from smoke and fire and allow occupants to leave the building safely;
- » Early detection of fire and early warning to occupants to facilitate safe evacuation;
- » Early suppression of fire where feasible;
- » Limitation of the development and spread of fire;
- » Containment of fire and smoke to the room or unit where the fire originates;
- » Management of fire safety.

17.5 Fire safety guidance

The following are the key issues which Dublin Fire Brigade believes management companies should consider and develop appropriate provisions for in relation to fire safety management.

In relation to all of the fire safety guidance issues outlined below, the management company should ensure that it has a clear understanding of the procedures in place and a written description maintained of:

- » The extent of the system and how it works;
- » Who maintains it and their competency to do so;
- » When is maintenance scheduled and what are the provisions for arranging access;
- » Who should be contacted for immediate repair if the system goes wrong?

17.5.1 Site access

There should be a clear understanding and written description of areas/parking bays which are strictly reserved for emergency vehicle access. The areas reserved for residents, visitors and delivery vehicle parking should be strictly adhered to.

17.5.2 Fire detection and alarm system

In addition to the detection and alarm systems which may be maintained by and be the responsibility of individual unit owners, all buildings should be provided with an appropriate fire detection and alarm system with all occupants aware as to how to raise the alarm. The fire brigade believe that management companies ought to consider retaining right of entry into individual units to ensure that equipment such as alarms are maintained and in the interest of avoidance of false alarms and nuisance to the occupants of other units.

17.5.3 Emergency lighting system

Almost all multi-unit developments will include an emergency lighting system to illuminate common escape routes such as corridors and stairways in the event of an emergency. In addition to this form of system, exit signposting illuminated in emergency lighting is generally required for accommodation such as basement car parks or other ancillary accommodation. With the exception of complex circulation layouts and at exit level of stairway that extend down to lower levels it is generally not necessary to provide exit signposting in developments.

17.5.4 Dry risers, wet risers, inlet breechings, and landing valves

A dry riser is a main vertical pipe designed to distribute water to multiple levels of a building enabling fire fighting personnel access a water supply without having to drag heavy water hoses up through the building to carry out fire fighting operations. They are generally provided in tall or inaccessible buildings. Maintenance is required to ensure that for instance the inlet breeching is not vandalized and that the landing valves have appropriate blank caps secured by a leather strap or similar.

Wet risers are pipes permanently charged with water which are immediately available for use on any floor at which a fire hydrant globe valve (also known as a landing valve) is provided. In the case of wet risers a detailed maintenance

programme is necessary for this sophisticated fire fighting equipment and must be carried out by competent specialists.

17.5.5 Fire fighting shafts and lifts

These are generally only associated with taller or relatively inaccessible buildings and refer to a series of features collectively referred to as a “Fire Fighting Shaft” which forms a bridge head for conducting fire fighting operations. It normally includes a protected stairway and protected approach lobby enclosed in 2 hour fire resisting construction (in an apartment building, the fire fighting lobby may be the normal lobby required for the protection of the escape stairway in taller buildings) along with a dry or wet riser a fire fighting lift and specific ventilation provisions from both the stairs and the lobbies at each level.

17.5.6 First Aid fire fighting equipment including hose reels

The provision of first aid fire fighting equipment for occupants is not governed by the building control regulations. However, it is considered desirable, particularly where vandalism would not be likely. Management companies may consider providing equipment within individual units or in the common areas. Hose reel installations are often provided in basement car parks but generally are not employed in the accommodation levels as inappropriate use can give rise to fire doors being held open by the hose and the creation of a trip hazard. It is necessary for all such equipment to be regularly maintained and management companies should consider making necessary arrangements through the house rules to ensure this is possible.

17.5.7 Staircase ventilation

The ability to ventilate stairways is a critical part of fire fighting operations at residential buildings. For stairways this is generally provided in the following forms:

- » Openable vents at every level in the stairway including at the top of the stairway enclosure;

- » A high level automatic opening vent at the top of the stairway that is opened on activation of smoke detectors in the stairway enclosure and is additionally manually openable by fire man's switch at the entrance level;
- » Pressurisation.

Where the management company is responsible for maintaining such systems it is recommended that there be a clear understanding and written description of:

- How the system works;
- Who maintains it and their competency to do so;
- When maintenance is carried out, and provisions for arranging access;
- Who should be contacted for immediate repair in the event of a fault.

Details of what was agreed for the development at fire safety certificate stage should be kept available for consultation.

17.5.8 Sprinklers systems (if provided)

These systems may be provided specific to each unit or to commercial or high fire load density occupancies. Maintenance of such systems will normally be the responsibility of the management company. Such systems are sophisticated and require to be maintained by specialists. Where the management company is responsible for maintaining such systems it is recommended that there be a clear understanding and written description of:

- » How the system works;
- » Who maintains it and their competency to do so;
- » When maintenance is carried out, and provisions for arranging access;
- » Who should be contacted for immediate repair in the event of a fault.

Details of what was agreed for the sprinkler system at fire safety certificate stage should be kept available for consultation.

17.5.9 Participation in fire safety instruction and drills/evacuation procedures and information

Management companies should consider developing and testing an evacuation drill with occupants. As a minimum, management companies should consider providing all occupants with key fire safety information in writing on an annual basis. This might include information in relation to:

- » Good fire safety practices and related house rules might include items such as:
 - Non storage in common areas;
 - Disposing waste in designated areas only;
 - Not interfering with fire safety equipment;
 - Not parking in designated emergency access and set down areas;
 - Co-operation with the fire safety management regime for the building;
 - Access to units for essential system maintenance;
 - Description of fire safety features and instruction in relation to location and use of fire fighting equipment;
 - Familiarity with escape routes from the building;
- » General fire safety as set out in the Department of the Environment, Heritage and Local Government's guide. In particular, occupants should be given advice in relation to:
 - What to do in the event of an activation of the fire alarm;
 - What to do if they discover a fire;
 - Use of chip pans, portable heaters, smokers materials, equipment maintenance, especially smoke alarm system, electric blankets etc;
 - The fitting of locks on unit entrance doors.

17.5.10 Security systems on access doors

In multi-unit developments there is a need to ensure that entrance doors function in a manner which provides an adequate balance between security and emergency access. While entrance doors need to be secure against unauthorised entry, it is advised that the security on escape routes, in particular the main entrance door should be “openable” from the inside and not reliant upon a fire detection and alarm system to render them “openable”.

It is also advised that panic bolts should not be required on internal doors on escape routes (these should only be permitted on final exit doors as other doors may be needed for re-entry). In addition, no door on an escape should require a key or code to operate from the escape side. As regards doors to individual units, they recommend that these be fitted with a lock which can be opened by a handle from either side and which can be locked on the outside by a key and on the inside only by a manually operated bolt.

17.5.11 Control of common areas

A key element of multi-unit development fire safety design is that the means of circulation and escape route such as corridors, landings, stairwells and doors are kept free of obstruction and fire load. All occupants should be made aware of the importance of keeping such areas clear of such obstruction. Common areas should be regularly inspected and where obstruction is found it should be removed and appropriate steps taken to prevent a recurrence. Advice in this regard should form part of the fire safety advice package to all occupants each year.

17.5.12 Maintenance of signposting and way-finding, hydrants and water supplies measures to assist fire fighting

In large multi-unit developments with basements or multi block developments, it is essential that emergency services, when responding to an alert, have adequate direction and

information with regard to access, way finding, building structure etc. In addition, where specific fire fighting access routes or equipment e.g. wet or dry risers or fire fighting shafts are provided it is essential that details as to their location are also provided in an effective manner e.g. signposts. Access to and identification of such facilities is essential in assisting firefighting operations. The management company should ensure that all signposting and water supplies are regularly inspected and are maintained.

17.5.13 Fire safe management of waste disposal

If not appropriately stored and disposed of accumulated refuse can represent a significant fire safety hazard particularly in terms of load and possibility of accidental or malicious fire. Accordingly, there should be procedures in place which set out how waste is to be stored in designated areas only which do not block entrance/escape access routes and are free from potential sources of ignition. In particular, it should be clear as to where responsibility lies for ensuring that waste is stored and removed in a timely manner and what should be done in situations where this is not the case.

17.5.14 Control of new works, e.g.: extensions, material alterations etc

To ensure that the carrying out of new works within a unit does not have an effect on the fire safety aspects of the overall building, it is recommended that the carrying out of such works should be subject to a process of regulation and approval by the management company. This is particularly important in instances where the building is a system built scheme as for instance with timber-framed construction or volumetric steel framed pod construction. It is recommended that suitably qualified persons evaluate the proposed works and that where necessary a fire safety certificate in relation to such works be obtained.

17.5.15 Managing the responsibility of other tenancies (e.g. retail units, offices)

In mixed developments, for example those having a mix of commercial/retail units and apartments, there should be a clearly defined legal relationship which sets out the responsibilities and duties in relation to fire safety for residential parts of the development and the commercial/retail units.

17.5.16 Special provisions: e.g. smoke control/clearance systems etc

In some multi-unit developments there may be special provisions such as smoke control/clearance systems underpinning the decision to grant the fire safety certificate. Management companies should ensure any such provision is adequately maintained.

17.5.17 Access to units for fire safety maintenance

The fire authority or other regulatory agencies may require access to individual units to discharge its inspection and enforcement function. As noted earlier, the management companies ought to consider retaining right of entry into individual units to ensure that equipment such as alarms are maintained and in the interest of avoidance of false alarms and nuisance to the occupants of other units. Access may be required to facilitate inspection and maintenance of equipment such as detectors and sounders on the fire detection and alarm system and to ascertain that items affecting fire safety such as unit access doors are maintained as prescribed in the building design.

17.5.18 Fire safety records management

It is recommended that management companies maintain a file on all fire safety issues. This file should be available to management company members and the building control authority. It might include details of the fire safety certificate, records relating to fire safety inspections and equipment maintenance.

Fire safety records should also contain details in relation to:

- » Premises (Address, owner, management company);
- » Fire Fighting Equipment (Inventory, inspection & maintenance);
- » Emergency Lighting System (Installation, inspection, maintenance, and works carried out);
- » Fire Detection and Alarm System (Zones, detectors, call points, inspections, maintenance and works carried out);
- » Fire Doors (Inventory, inspections, maintenance and works carried out).

To ensure that the building is in compliance with the fire safety certificate, it is recommended that management companies request from the developer the following:

- » A copy of the approved fire safety certificate application documentation;
- » The fire safety technical report which accompanied the application (the “Compliance Report”);
- » Any supplementary reports or clarifications submitted as part of the application;
- » Drawings including:
 - » Site location map and site plan;
 - » Floor, section and elevation plans;
- » The certificate as issued including any conditions etc;
- » Details of any letters accompanying the application or its assessment.



Appendices 1-4

1. **Glossary of Key Terms**
2. **Contact Details of State Bodies**
3. **Management Company/
Managing Agent Contract Checklist**
4. **Code of Practice for Developers**

a1

APPENDIX 1
Glossary of Key Terms

A

Acceptance fee

A fee charged by some lenders when they grant a mortgage. Typically the fee would be about 0.5% of the value of the loan. It's now rare to come across acceptance fees – most lending agencies in Ireland don't charge them.

Annual percentage rate

The “true” annual cost of a loan. Apart from interest charges, the APR also takes into account the other costs such as arrangement fees.

The APR is calculated as a percentage rate of the total cost of your loan. This APR figure must be shown on all advertisements for loans, to give consumers a clearer picture of what they can expect to repay and compare rates more easily.

Annuity mortgage

The most common form of mortgage. The capital that you borrowed and the interest you owe on it are paid off in monthly instalments.

Apportionment

The system that management companies use to decide what percentage of the overall service charge bill is owed by each individual homeowner in a development. It is usually calculated using factors such as the size or type of unit.

As built drawings

A final set of drawings which record all features of a building or housing unit as actually built. These provide a permanent record for the owner and are a key reference resource for future maintenance and any legal issues that may arise.

B

Breach

In legal terms, a breach is the invasion or violation of a right, duty or law. A “breach of contract” is a failure to perform some promise or condition that is part of the contract between the seller and the buyer. For example, service charges are not an optional payment if they are part of the terms and conditions of your contract to buy a property. So if you refuse to pay the charges you may be in breach of contract.

Bridging loan

A temporary property loan to provide finance (bridging finance) when you are buying a home but the sale of your own home hasn't been completed yet. Home buyers may also apply for bridging finance if they are placing an offer on a home but are still waiting for the mortgage loan to come through.

Building agreement

A contract between the buyer and the developer. This sets out each side's obligations and responsibilities with regard to how, when, for how much and in what manner the unit will be built and paid for.

Building regulations

Regulations set by the Department of the Environment, Heritage and Local Government which provide for the health, safety and welfare of people in and around buildings.

The regulations apply to the construction of new buildings and to extensions and material alterations to existing buildings and to certain changes of use of existing buildings.

C**Closing date**

The completion date of the unit as set out in the building agreement whereby legal transfer of the property passes to the buyer and the balance of payment for the unit is paid to the seller.

Common areas

The physical areas shared by all owners in an apartment block or estate. Common areas may include, for example, car parks, entrance halls and gardens.

Completion

Completion by a developer refers to the point at which they deem the development is complete with regard to adhering to the building regulations and the planning permission. It can also refer to:

The point where all legal and financial steps have been completed in the sale of a home, and ownership is legally transferred from the seller to the buyer.

When buying a newly built property a “completion notice” also refers to an important document that the builder sends to your solicitor when all the construction is finished. As soon as you receive the completion notice you should “snag” the house - compile a list of potential defects or uncompleted work (snags) that the builder must fix before the sale is completed.

Contract of sale

The written legal agreement between the buyer and seller with regard to the sale of the property. This contract binds the parties to the property transaction.

Conveyancing

The legal term referring to transfer of ownership of property. In conveyancing buyer is usually referred to as “the purchaser” and the seller as “the vendor”.

D**Deposits**

Where new units are purchased, standard practice involves the buyer paying a refundable booking deposit to the developer or their estate agent to secure the property. A further deposit (generally 10% of the total purchase price) is payable at contract stage.

Developer

A firm or individual who builds a multi-unit development and may also own the land upon which it is built.

E**Endowment mortgage**

A particular type of mortgage which is now rare because of major risks to consumers. It involves taking out an insurance policy designed to repay the entire loan, usually after 20 years. Each monthly payment is a combination of a premium on the insurance policy plus the interest on the loan. Nothing is paid off on the principal of the loan until the policy matures. At that point, there should be enough to pay off the whole loan, and maybe even provide you with a further lump sum too.

Equity

Usually taken to mean the value of your property minus the amount of the mortgage you still owe. See also “negative equity”.

F**Fixed rate interest rate**

The interest rate remains fixed for an agreed period of time, so the repayments don’t change either and it is easier to budget for them.

Freehold

Usually refers to the outright ownership of a property and of the land it stands on. See also: leasehold.

G**Gazumping**

Where a seller withdraws from a property sale at the last minute to accept a higher bid. Gazumping typically occurs after an offer has been made and accepted “subject to contract” – i.e. before any legal agreement on a sale has been reached between the parties.

Gazundering

The opposite of gazumping (see above). Gazundering occurs when a buyer withdraws from a sale at the “subject to contract” stage.

H**House rules**

The terms and conditions setting out rules for communal living in apartment blocks and housing developments. These rules are usually drawn up by the management company, and typically cover issues such as noise rules, keeping pets, hanging laundry from balconies, refuse disposal, parking etc.

HomeBond

HomeBond is an insurance scheme which provides a warranty that protects the buyer of a newly built home in certain situations such as the builder going bankrupt or major structural defects in the first 10 years.

See also: the Premier Guarantee scheme.

I**Interest-only mortgage**

A type of mortgage where you only pay interest during the term of the loan. Then at the end of the term you have to pay off the principal - the original amount borrowed.

J**Joint tenancy**

This is a key issue when buying property with friends or relatives, or buying a home with a co-habiting unmarried partner. These types of co-owners don't have the same property rights and obligations as a family based on marriage. Two common types of co-ownership are “joint tenancy” and “tenancy-in-common”. The type you choose can make a big difference to ownership and to tax liabilities in the event of one co-owner dying.

With a joint tenancy agreement, the whole property is owned by two (or more) people. If one dies, the survivor automatically owns the property. If there were originally more than two joint tenants, this process continues until the property goes to the last surviving joint tenant.

With a tenancy-in-common agreement, the survivor might not necessarily inherit the property – it's automatically passed onto the deceased's estate. Even if the survivor is named in the will, there will be major tax implications.

Any tenancy-in-common agreement will need to outline individual contributions towards the acquisition and purchase of the property, and the action to be taken if the business relationship ends or one owner dies.

L**Lease**

The lease document will set out the legal responsibilities and obligations of owners, the developer and the management company. It sets out for example the names of the parties to the lease, duration of the lease, service charges and any house rules. The person to whom a lease is granted is known as a lessee, the person granting the lease known as the lessor.

Leasehold

A right to use – but not own – a property for an agreed amount of time. The “freeholder” retains ultimate ownership.

For example, owning the leasehold interest in an apartment means you do not own the land it stands on. Leasehold ownership is for a fixed number of years (though this is usually hundreds of years).

One of the reasons that a management company is formed, besides maintaining a property development, is for this company to own the leaseholds of each unit and of the common areas of the development.

Owning the freehold interest means you own the land and building outright, and this is more typical for houses rather than apartments.

M

Managing agents

Firms or individuals employed by developers and management companies to oversee maintenance and other services in housing developments.

Management company

A company established to be the legal owner of the unit and common area leaseholds and to manage and maintain the common areas within an apartment block or housing estate.

Typically, the management company is responsible for the maintenance of halls, corridors, lifts, public lighting, footpaths, and gardens, as well as refuse collection and water services.

In many apartment developments the management company is also the legal owner of the leasehold of individual units and the freehold of the common areas of the development.

Memorandum and Articles of Association (MAA)

The governing documents of a company such as a property management company. These must be filed with the Companies' Office. In property transactions, the wording of the management company's MAA is very important as it sets out how the company is operated and controlled.

These documents also clarify what rights you – as a buyer and member of the management company – will have.

Mortgage intermediaries

Any party other than a mortgage lender (or credit institution) who advises on or arranges the provision of a mortgage in return for a commission or payment.

Mortgage protection

An insurance policy that pays off your mortgage if you die. The cover usually decreases as the balance outstanding on the mortgage decreases. However, you can buy a level term policy which covers you for the full original mortgage amount for a certain number of years, generally until the date your mortgage is paid off.

Mortgage Repayment Protection Insurance

An insurance policy that covers your mortgage loan repayments for a limited period of time in certain circumstances, such as illness or disability. Mortgage Repayment Protection Insurance is not mandatory and there are often many exclusions attached to such policies.

Multi-unit development

A building or group of buildings such as an apartment block comprising multiple residential properties that share certain physical areas.

N

Negative equity

This occurs when the amount you borrow exceeds the value of your property. If you were to sell your home, you wouldn't receive enough money to pay off your mortgage.

P

Pension mortgage

An interest-only mortgage where you eventually pay off the principal of the loan through a pension plan. Pension mortgages are mostly used to buy investment properties tax-efficiently, but they can also be used to buy a home.

Planning permission

Authorisation granted by a local authority to build, alter or develop a property. This permission must be obtained before construction starts.

Practical Completion Certification

Practical completion on a residential construction project is defined as the stage when a property is substantially complete and fit for occupation. At this stage, the developer will ask the buyer to sign a Practical Completion Certificate verifying that the buyer is satisfied with the standard and progress of work. When the buyer signs this certificate, the developer is then entitled to demand any outstanding monies contractually agreed for payment after the buyer signs the Practical Completion Certificate.

Buyers are advised to engage a building surveyor to inspect a property before signing the Practical Completion Certificate.

Premier Guarantee

An insurance scheme for newly built homes, and a rival to the HomeBond warranty scheme. The Premier Guarantee lasts for 10 years and covers serious structural problems including leaks from water, chimneys and flues in the first five years.

Q**Quote**

If you are selecting a service supplier such as an electrician, builder or plumber, always ask them for a quote (quotation) for the work involved. This should be the definite price for which the trader is prepared to complete the work involved, and must include VAT.

An estimate, on the other hand, is tentative and may be subject to change if the circumstances of the job are not what they appear to be on the surface.

R**Redemption fee**

A redemption fee is a fee to redeem or pay off your mortgage. It is prohibited under the Consumer Credit Act. A fixed rate redemption fee is different. It is a fee for breaking a fixed interest contract whether or not you redeem your mortgage.

S**Service charge**

Also known as “management charge”. An annual fee paid by unit owners to the management company to provide for services to manage and maintain the common areas. Payment is not optional if it is set out as a term and condition of the contract to purchase the unit.

Sinking fund

The money that a management company puts aside each year to cover major but more long-term expenses that may occur in the maintenance of a property development. The sinking fund is usually financed by including it as part of the annual service charge.

Snagging

Creating a snag list (see below) of problems in a newly built house or apartment, then checking whether the builder has rectified each snag or problem.

Snag list

A list of any snags (problems or defects) that should be drawn up when you are inspecting a newly built home. You should give the snag list to your builder so that they can be rectified before you complete the purchase. See “snagging” above.

T**Taking in charge**

A residential development is said to be “taken in charge” when the local authority takes charge of the management and maintenance of public lighting, roads, open spaces, car parking, water mains, sewers and other shared amenities within the development.

Tender

A process of selling, particularly of property. In this instance a price isn’t set for the property. Instead, the estate agent asks interested parties to “tender” or make their best offers in writing by a set date – usually as “sealed bids” (written bids in sealed envelopes).

U**Unit**

An individual property such as an apartment which is contained within a development.

V**Valuation survey**

A survey carried out by a surveyor on behalf of the lender (i.e. your bank or building society) to ensure that the property you want to buy is not worth less than the proposed loan.

The cost of the valuation is usually set at a fixed amount and generally has to be paid by the borrower, although some lenders offer to fund the valuation costs themselves. A valuation survey (or “valuer’s report”) is separate to a structural survey of a second-hand property.

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APPENDIX 2

Contact Details of State Bodies

The Companies Registration Office (CRO)

The CRO is the statutory authority for the incorporation of new companies and registration of business names in Ireland. The Office is responsible for the enforcement of the filing requirements of companies, and provides information to the public. Almost all of the information filed by companies with the CRO is available to view on payment of a fee.

For further information contact:

The Companies Registration Office
Parnell House, 14 Parnell Square, Dublin 1
Tel: 01 804 5200/LoCall 1890 220 226
Fax: 01 8045 222
Web: www.cro.ie

The Office of the Director of Corporate Enforcement (ODCE)

The ODCE is the statutory body whose primary mandate is encouraging adherence to the requirements of the Companies Acts and bringing to account those who disregard company law. The ODCE also provides information to companies, officers and shareholders, as to their obligations and rights while dealing with a company.

For further information contact:

The Office of the Director of Corporate Enforcement
16 Parnell Square, Dublin 1
Tel: 01 8585 800/LoCall 1890 315 015
Fax: 01 8585 804
Web: www.odce.ie

The National Consumer Agency (NCA)

The National Consumer Agency is a statutory body established by the Consumer Protection Act 2007. The Agency's activities span a broad remit, being delivered through research, advocacy, education, information, awareness and enforcement initiatives. As well as ensuring compliance with consumer legislation, the NCA provides information on consumer rights via its website and Lo-Call helpline for consumer queries.

For further information contact:

The National Consumer Agency
4 Harcourt Road, Dublin 2
Tel: 01 402 5500/LoCall 1890 432 432
Fax: 01 402 5501
Web: www.consumerconnect.ie

The Department of the Environment, Heritage and Local Government

The Department of the Environment, Heritage and Local Government is the Department primarily responsible for the formulation and implementation of policy and for the preparation of legislation in relation to housing, planning and development. The Department also oversees the implements policy in relation to Local Authorities who deliver most of the frontline services promoted by the Department.

For further information contact:

The Department of the Environment, Heritage and Local Government
Custom House, Dublin 1
Tel: 01 888 2000/LoCall 1890 20 20 21
Fax: 01 888 2888
Web: www.environ.ie

The National Property Services Regulatory Authority

The regulation of property service providers in Ireland will be formalised under the auspices of the National Property Services Regulatory Authority (NPSRA). The Bill providing for the statutory establishment of the Authority is expected to be published in 2008. The main functions of the NPSRA will be to operate and enforce a licensing system covering all providers of property services, i.e. auctioneers, estate agents and property managing agents.

For further information contact:

The National Property Services Regulatory Authority
2nd Floor, Abbey Buildings, Abbey Road
Navan, Co Meath.
Tel: 046 903 3800/LoCall 1890 25 27 12
Fax: 046 903 3888
Web: www.npsra.ie

The Financial Regulator

The Financial Regulator is responsible for the regulation of all financial services firms in Ireland. Its main tasks are to help consumers make informed decisions on their financial affairs and to regulate the activities of all financial services firms. The Regulator provides consumers with information about the costs, risks and benefits of financial products and services, helping them make informed decisions on their finances.

For further information contact:

The Financial Regulator
6-8 College Green
Dublin 2.
Tel: LoCall 1890 77 77 77
Web: www.itsyourmoney.ie

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APPENDIX 3 Management Company/ Managing Agent Contract Checklist

Introduction

Where a Management Company decides to employ a Managing Agent it is recommended that a written service contract be agreed between the two parties. At present, there is no standard contract which Management Companies and the Managing Agents that they employ are obliged to use. Through the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency has developed this document as a practical checklist for consumers or management companies unfamiliar with what should be considered in the contract.

The Management Company should ask the Agent to provide clear and precise information in plain English as to the services they are agreeing to provide. The Management Company should ensure that all Owners are aware of this information. The contract should always be between the Management Company and the Agent and not between any individual Owner(s) and the Agent. To ensure that the terms and conditions of the contract safeguard their interests, Management Companies should consider seeking independent legal advice before entering into a contract with a Managing Agent.

Contract Terms and Conditions Checklist

1. Identification of property

Specify the name and address of the property and include a detailed written description and where available, a map, clearly identifying the common areas for which the Managing Agent will be responsible for managing and maintaining.

2. Names of parties to contract

Specify the names and contact details of the parties to the contract as registered with the Companies Registration Office. The Agent's qualifications, membership of a professional body and licence details when introduced by the National Property Services Regulatory Authority should be outlined where applicable.

3. Authorisation to act on behalf of Management Company

Specify the Directors authority to enter into contract; the extent of the Agent's authority to act on behalf of the Management Company in providing services under the contract.

4. Commencement and expiry date

Specify the contract start and expiry dates, outlining the period for which the contract remains in force.

5. Renewal of contract for fixed term

Where the contract is for a fixed term, any provisions to renew the contract for a subsequent fixed term should be disclosed. Renewal should be subject to the written consent of the Directors.

6. Termination of contract

Specify the terms and conditions (e.g. breaches of contract terms) under which both parties can terminate the contract in advance of the agreed expiry date. Specify a timeframe for serving written notice e.g. 1-3 months.

7. Mediation of disputes

Specify that where a dispute arises relating to breaches of the terms and conditions of the contract, the parties should first resolve the dispute through bilateral discussions and then proceed to submit the matter to

mediation. The parties should jointly name an acceptable mediator and will share equally in the cost of such mediation.

8. Post Termination of contract

Specify the procedures to be followed by both parties upon notice of contract termination being served. At a minimum the following should be outlined:

- Timeframes;
- Service provision;
- Lead in time for new Agents;
- Upon termination, the Management Company should furnish to the Agent, save in the case of legal action outstanding fees, commissions and expenses due under terms of the contract;
- Upon termination, the Agent should furnish to the Management Company all company records including for example the membership register, minutes files, invoices, contracts, receipts, books of account for the current financial year and preceding years.

9. List of services provided

Specify (as appended contract schedules) the relevant services provided by the Agent on behalf of the Management Company. The list should include:

- Services provided by the Managing Agent;
- Services it may provide or procure from third parties at an extra cost;
- Services it does not provide (or is not suitably qualified to provide).

9.1 Examples of services provided by Managing Agents may include:

Day-to-day maintenance

- Repairs to and maintaining common property or engaging tradespersons to do so (Provide supplementary list specifying all services e.g. window cleaning, refuse collection etc);

- Maintenance of equipment for fire safety (in particular fire detection and alarm systems, emergency lighting). In some instances this may be included as an exceptional service. (See over);
- Routine site inspections and repairs.

Exceptional Maintenance Services

- The Management Company may require external professional advice and supervision on such projects. Unless specified in the contract, the Agent may not provide these services and may need to procure 3rd party services. These may involve the charging an additional fee for procuring and/or supervising such works. Examples of such work may include:
- Organising building inspections and reports;
- Major refurbishment or repair work;
- Arranging consultation services with a chartered surveyor for the completion of a sinking fund analysis report or to complete a snag/dilapidations report;
- Coordinating and reviewing and where requested procuring third party service providers to ensure compliance with fire safety or health and safety requirements;
- Legal and planning matters.

Administrative

- Arranging and undertaking administrative duties in relation to annual general meetings, other meetings and returns to the Companies Office if the Agent is engaged as Company secretary;
- Maintaining Management Company records (for example, the members' register, minutes of meetings). The contract should specify how many meetings the Agent will attend annually, their role and function at these meetings and where possible the dates of when these meetings will be held.

Financial

- Drafting the annual budget for the Management Company's approval;
- Estimating and apportioning service charges and the sinking fund in accordance with the terms of the lease;
- Billing and collecting service charges payments from owners;
- Administrating the Management Company's accounts;
- Arranging insurance cover for the common areas and the development;
- Paying creditors (for example, accounts for water charges, electricity, maintenance);
- Any arrangements with regard to responsibility for the collection of service charges arrears will be clearly outlined, e.g., engagement of legal services/charging of late payment fees.

Legal

- Undertaking steps necessary to recover any money owing in relation to unpaid service charges in accordance with an agreed (as agreed between Company and Agent) debt collection policy;
- Appointing legal services/representing the Management Company in legal proceedings and responding to requisitions on title (These may be subject to an additional fee).

Emergency services

- Mechanical and electrical repairs;
- Reactive repairs and emergency services.

10. Service Levels

Specify the frequency and timing at which the listed services will be provided; the procedure for Directors (and Owners) to enter into correspondence with the Agents and the remedial actions they will take in relation to queries regarding service delivery.

11. Payment of Agent for services rendered

Specify how the Agent's services are to be invoiced; the amount that the Agent is so entitled to; the calculation and payment method; a payment schedule and whether the fees are inclusive/exclusive of VAT.

12. Service charges

Specify that service charges shall not be used to remedy development level snagging or completion related issues. Where responsibility for estimating the likely service charge budget has been delegated to the Agent, specify that the Directors shall be provided with due notice of changes to the service charge levy and provided with a written notice clearly setting out the basis for the change. The Directors must thereafter approve the budget before the service charge is charged out to Owners.

13. Service charges collection

Specify whether the Agent shall be authorised to collect on behalf of the Management Company service charge payments payable to the Management Company due, or to become due, from Owners. Where such an arrangement is in place, the following at a minimum should be outlined:

- All monies received in relation to service should be lodged directly in bank accounts under the name of the Management Company;
- The timeframe for collection notice should be as set out in the lease and sufficient notice that service charges are due should be clearly communicated to Owners in advance;
- The Agent should provide receipts for service charge payment to individual Owners upon request and retain a copy of said receipt for the Management Company's records.

14. Service charges arrears collection

Specify the role of the Agent in relation to the recovery for non-payment of service charges by Owners. If a late payment fee is to be charged for non-payment of service charges indicate the interest rate, where applicable in accordance with the lease. Owners should be clearly informed of any such arrangements.

with full information on the programme of works, costs and the process to be adopted for keeping Owners informed on progress;

- The sinking fund, its expenditure items and its annual closing balance will be clearly identified in the audited accounts (this amount should be distinct from the closing balance).

15. Sinking fund

Where the Management Company decides to provide for a reasonable and adequate sinking fund, the sinking fund should be based on a professional assessment (e.g. a chartered surveyor). The contract should specify:

- The Agent's role in coordinating, reviewing and where requested procuring, third party service providers to ensure an adequate sinking fund is provided;
- The Agent's role in administering and managing the sinking fund monies on behalf of the Management Company;
- The maintenance items the sinking fund will be used to cover. As far as possible these should relate to specifically identified expenditure (e.g. roof, boiler, plant, lift, etc.) having regard to the anticipated life cycle of the development rather than unidentified future liabilities;
- The Directors will provide the Agent with a register of the principal capital items in the development outlining their location, warranty periods, anticipated useful life and service records;
- The timeframe for the sinking fund estimate for example 25-30 years;
- The terms under which access to sinking fund monies will be allowed and expenditure authorised;
- Where substantial planned works (expenditure in excess of a stated percentage of annual service charge budget) are planned, the results of tenders should be communicated to the Management Company, together

16. Service providers

Specify that the Agent shall employ service providers based on a competitive and transparent tendering process. The details of which should be made available to the Management Company upon request. The basis for the selection of third party service providers should be set out e.g. checking for insurance, competence, competitive terms and rates. Where alternative procedures for awarding contracts are adopted, the Agent should justify and disclose the basis for the adoption of these procedures if requested by the Management Company.

17. Bank accounts for service charges and sinking funds

Specify that service charge and sinking fund payments will be held in separate designated client accounts in the Management Company's name and the type of account monies will be held in. Any interest earned should be clearly identified in the audited accounts and after any appropriate deductions made (bank charges etc.) credited back to the account. The names of persons entitled to access the accounts and the terms and conditions regarding access to the accounts should also be set out.

18. Access to accounts and authorised spending limits

Specify that the Agent shall secure the prior approval of the Management Company for expenditures in excess of stated percentage of the annual service charge budget) except where this expenditure is a monthly or recurring operating charge and/or essential/emergency

or reactive repairs necessary to protect the property from damage.

19. Financial reporting (ownership of records)

Specify that all books of accounts/accounting records are and shall remain the property of the Management Company and be freely available for inspection by the Company Directors, Secretary, Auditor and Legal advisors. In addition the following should be outlined:

- Audited accounts will be prepared in a format which is consistent and comparable with previous and future accounts and in conformity with standards as set out by Irish accountancy bodies;
- Where the Agent has undertaken the administrative duties in relation to filing annual returns to the Companies Registration Office on behalf of the Management Company, the accounts shall be provided in due time to the Directors for examination and approval and the Directors shall return them in sufficient time to allow for the convening of the AGM and for filing the accounts with the Companies Registration Office;
- Where the Agent is responsible for filing the returns to the Companies Registration Office, any late payment fees imposed for non-compliance shall not be borne by the Company where it is not responsible for the delay.

20. Rebates, discounts or commissions

Specify that the source and amount of all rebates, discounts or commissions, if any, received by the Agent in respect of expenses payable by the company for services provided or arranged by the Agent will be disclosed and accounted for in the trading profit and loss sheet.

21. Communication

Specify the frequency and methods of communication (e.g. email, meetings) between parties. In particular,

the contract should clearly outline how any requests/complaints from Owners are to be facilitated and timeframes and guidelines should be set out in relation to:

- Meetings with Directors/Owners;
- Routine and ad hoc inspections;
- Responding to requests/complaints;
- Dealing with emergencies.

22. Information

Specify the format and frequency with which the Agent shall provide the Management Company and Owners with information statements (e.g. monthly/quarterly/bi-annual financial statements of receipts, expenses, charges, any expenditure of a capital nature, statement of income and expenditure, work progress reports etc). In addition to fulfilling statutory obligations in relation to keeping a register of members, the Management Company should liaise with the Agent to arrange a process whereby an up to date register of members contact details can be maintained. Agents should provide the Management Company with contact details of personnel responsible for managing the development and their roles and responsibilities.

23. Good practice

Specify that the Agent shall use due diligence in the management of the development and the common areas and shall act in the Management Company's best interest at all times in accordance with the principles of good estate management all applicable codes of practice.

24. House rules

Specify the procedures in relation to complaints in relation to the house rules. The Directors and Agent should agree a process whereby all Owners and Tenants

are made aware of the Management Company's procedures as regards breaches of House Rules.

25. Disclosure of interest

Specify that the Agent shall not continue to act, as the company's Agent if doing so would place the Agent's interests in conflict with the Management Company's interests. Specify that Agents shall in accordance with the Companies Acts and disclose whether they have a personal or commercial relationship with any service provider or the Management Company Directors. The following are examples of a personal or commercial relationship:

- Family relationship;
- Business relationship;
- Relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

26. Confidentiality

Specify that the Agent shall ensure that the collection, storage and use of all personal or confidential information are in accordance with data protection legislation.

27. Records access and transfer

Specify that the Agent shall maintain a comprehensive system of records with respect to the activities and operation of the Management Company. Arrangements concerning the length of time such records shall be maintained and procedures for access by Directors and Owners to the records should be set out. In addition, the following should be outlined:

- The Directors should furnish documents and records as requested by the Agent to undertake their duties;
- All records should be subject to examination by the Management Company Directors, and its solicitors and accountants;

- The Agent should make access to the records reasonably available (according to law and within timeframes) to the members and;
- Arrangements to facilitate the transfer of the records between Agents.

28. Agents Insurance

Specify that the Agent must furnish a copy of and confirmation of their professional and employee liability status and that certification shall be provided if requested.

Where the Agent subcontracts work to be undertaken on behalf of the Management Company, require confirmation that professional and employee liability for subcontractors exists and is up-to date and adequate for the services undertaken on the site. The process for making insurance claims should also be set out and clearly communicated to Owners and Tenants.

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APPENDIX 4

Code of Practice for Developers

Introduction

As part of the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency and the Irish Home Builders Association have developed a Code of Practice to be followed by developers who are members of the Irish Home Builders Association (IHBA) in their dealings in relation to the development, interim management and sale of multi-unit development properties.

This Code of Practice shall be applicable to all new Multi-Unit Developments by IHBA members where Management Company arrangements are put in place after 1st September 2008. Reflecting the best practice aspect of this Code, IHBA members may apply the same principles in respect of the operation of Management Companies established prior to this date. The Code sets out a series of principles designed to provide a framework for the maintenance and management of common areas and for the provision of common services in Multi-Unit Developments. It presents what is considered to be current best practice in the effective management and administration of Multi-Unit Developments.

The Code sets out a general framework of minimum requirements that apply to members of the IHBA and is subject to any more statutory requirements that may be introduced or revised by Government Departments.

The Code of Practice is also accessible via the website of the Irish Homebuilders Association at www.ihba.ie as Code of Practice (COP 1/o8).

1. The Management Company

The Management Company of a Multi-Unit Development² will be established in the first instance by the Developer³ as an essential vehicle via which to facilitate sale of the Units. The Management Company is a central element in the operation, management and maintenance of a Multi-Unit Development. The Management Company is responsible for owning, managing and maintaining the common property and common assets of the Multi-Unit Development, for the benefit, and on the behalf, of the Unit Owners.

It is essential that an appropriate legal structure be adopted in establishing the Management Company. This structure should provide for the effective operation and funding of the Management Company whilst under the control of the Developer, in the first phase of existence of the Multi-Unit Development, and subsequently, once control passes to the Unit Owners.

The standards of information sharing set out hereafter shall apply, irrespective of the legal structure selected for the Management Company.

To facilitate the smooth operation of the Multi-Unit Development, the Developer shall:

- 1.1** Provide for the establishment of a Management Company duly registered with the Companies Registration Office, in a timely fashion and in compliance with any such directions of the relevant planning permission.
- 1.2** Following establishment of the Management Company, instruct the Directors to arrange for the preparation of a budget, by a suitably qualified professional, documenting the required service charge categories, specifying recommended sinking fund contribution levels and setting out the apportionment method under which each category of Unit Owner shall be required to pay their annual

service charge/sinking fund contribution. The service charge determined shall be appropriate (based on best information available at the time) and the method of apportionment shall be in compliance with good estate management, particularly with regard to the principle of relativity of service charge contributions.

- 1.3** In the standard marketing materials made available in the sales process, inform prospective purchasers of the requirement for Unit Owners in a Multi-Unit Development to become Members of the Management Company on completion of the sale of their Unit. Information shall also be provided to set out the principal entitlements and obligations associated with such membership.
- 1.4** Make available to purchasers in any Requisitions on Title, or to an existing member of the Management Company, a copy of the Memorandum and Articles of Association of the Management Company; such information to be furnished within one month of the Management Company being established. As part of requisitions on title, Directors of the Management Company shall furnish information on the Management Company's CRO registration number, if available, to purchasers of property within the Development.
- 1.5** Provide that the Management Company keep appropriate records of service provision contracts⁴, to facilitate smooth transition of information on hand-over of control of the Management Company to the Unit Owners.
- 1.6** While acting as or having control of the appointment of the Directors of the Management Company, have full Director responsibility for filing the required company returns to the Companies Registration Office. The Books of Account for the Management Company should be maintained as separate accounts and managed in accordance with good accounting standards. During this period, Management Company members shall not be liable for any costs arising from returns not made

to the satisfaction of the Companies Registration Office.

- 1.7** Ensure that the voting structure of the Management Company is not weighted in such a way that enables the Developer to retain a controlling majority after transfer of control of the Company to the Unit Owners. With the exception of mixed-use developments, the provisions and arrangements relating to voting and decision taking by the Unit Owner controlled Management Company shall be such that each Owner of a Unit in the Development shall have one vote per Unit owned.
- 1.8** Facilitate the provision of membership certificates to Unit Owners on completion of their purchase transactions.
- 1.9** Ensure that the Management Company compiles a register of Unit Owners' contact details for the purpose of the effective administration of the Management Company. These details shall be made available to the Managing Agent appointed to manage the Development.
- 1.10** In compliance with planning permission requirements, indicate and make available for use by the appointed sales agent, details of the services and public areas within the Development it is intended shall be taken in charge by the Local Authority⁵ and those it is intended shall remain under the sole control of the Management Company.
- 1.11** Document and make available on request to purchasers, the circumstances and indicative timeframe under which it is envisaged that control of the Management Company will be transferred to the Unit Owners and conveyance of the common areas to the Management Company will occur. For large-scale Developments where phased completion is envisaged, set out the intended schedule of transfer of control of each phase to the Unit Owners, both in terms of control of the Management Company and of transfer of ownership of the common areas.

1.12 On establishment of the Management Company or as soon as is reasonably practicable thereafter, provide the Management Company/duly elected Members Committee⁶ and Managing Agent⁷ with:

- The title documents and counter part leases
- Agreed Snag list and Practical Completion Certification
- As built drawings
- A register of all Capital Assets
- Warranties and other Guarantees, including test records for drainage, water and heating pipe work
- Certifications for Fire Safety, Health and Safety, Planning and Building Regulations

1.13 In the period prior to the transfer of control of the Management Company to Unit Owners, and in addition to the Management Company fulfilling its requirements under the Companies Acts, provide at least half-yearly updates regarding the activities and financial status of the Management Company through the Managing Agent and make these updates available on request to the duly elected Members Committee.

2. Managing Agent

The Managing Agent is a business entity contracted by the Management Company to provide and procure, as relevant, services in respect of the day-to-day management, administration and maintenance of the Development. The Managing Agent shall carry out such tasks as outlined in their contract, in return for a fee, the terms of which shall be agreed in advance and set out in a Contract between the Management Company and the Managing Agent. In establishing such initial contracts for new Developments with Managing Agents, Developers, while acting as or being responsible for the appointment of, Directors of the Management Company, shall:

2.1 Appoint a Managing Agent for such interim periods as may be appropriate pending formal transfer of control of the Management Company to the Unit Owners.

2.2 Expressly refrain from committing the Management Company to long-term agreements with any Managing Agent, pending the transfer of control of the Management Company to the Unit Owners.

2.3 Arrange for notification to issue to purchasers of the appointment of a Managing Agent, within one month of the Agent being appointed.

2.4 Ensure that the Managing Agent informs purchasers of the specific duties to be provided under their contract, how they may be contacted and how requests/complaints from Unit Owners are to be handled.

2.5 As part of the contract with the Managing Agent, require that the Agent meet at least quarterly with the members of the Management Company to ensure a regular channel of communication. Where a Members Committee has been called into existence pending transfer of control of the Management Company to Unit Owners, such meetings may be arranged instead with duly elected representatives of that Committee.

2.6 Require that the Managing Agent, at least three months prior to determination of the budget, procure tenders in respect of the various service contracts from qualified service providers. Such tenders must be brought to the attention of the Directors/Members Committee of the Management Company for consideration and acceptance so as to secure value for money in contract allocation and determination of the budget.

2.7 Require that the Agent refrain from entering into long-term contracts with suppliers of any service to the Management Company without the prior authorisation from Directors of the Company.

3. Service Charges

Service Charges are fees applied to Unit Owners in a Multi-Unit Development in respect of ongoing

costs involved in the management, maintenance and repair of common areas and in the provision of common services, including cleaning and waste management. Payment of such fees by Unit Owners is a condition of their lease. Appropriate application of these fees for their due purpose, on a value for money basis, is a critical element in protecting the value of the Development and the quality of life of residents, over time. The setting, collection and application of Service Charges is the legal responsibility of the Management Company, although important parts of these activities are typically outsourced to the Managing Agent under the terms of their contract.

On formation of the Management Company, Developers, either as Directors of the Management Company or having responsibility for the appointment of such Directors shall:

- 3.1** Cause to be calculated a budget making provision for an annual service charge revenue appropriate and adequate to finance the running expenses of common area maintenance, common service provision and Management Company administration costs.
- 3.2** On issue of contracts to purchase, confirm the service charge to be applied for the Development in the first year and estimate charges for years 2 & 3, based on normal wear and tear, available information and average inflation costs.
- 3.3** Provide purchasers with a clear statement outlining the principal services to be provided and paid for through the aforementioned year 1 service charge. Estimates for years 2 and 3 should be calculated on a similar basis to the year 1 estimate, allowing for additional costs/services where known and for normal wear and tear, depreciation and average inflation costs. Additional necessary services or costs likely to be incurred in future years and/or those not factored into the year 1 but likely to fall due shortly thereafter

(e.g at the end of warranty periods) should be highlighted where known.

- 3.4** Expressly forebear from the application of service charges in the remedy of snagging or completion related issues in a Development
- 3.5** Lodge, or cause to be lodged; all monies received in relation to service charges and sinking fund contributions in separate bank accounts under the name of the Management Company.
- 3.6** Make good shortfalls in attributable service charge contributions⁸ arising from unsold Units in a Development until such time as these units are sold.

4. Sinking Fund

The sinking fund is an essential provision for the funding of medium to long-term capital expenditure in respect of the maintenance, refurbishment and upgrading of the Development and for the financing of non-recurring or unexpected additional expenses incurred in relation to common areas.

In general, all Multi-Unit Developments should have a sinking fund⁹, and information concerning the value of this fund, the information regarding the basis for the calculation of contributions required and the period over which it is intended to serve the needs of the Development, should be freely available to members of the Management Company.

In order to establish a sound basis for the accrual of an adequate sinking fund, Developers as Directors of the Management Company, upon formation of a Management Company, shall:

- 4.1** Arrange for the preparation of a budget, by a suitably qualified professional, specifying recommended sinking fund contribution.

4.2 Ensure that the sinking fund requirement is based on the existing condition of the Development, its potential infrastructure liabilities and the assumption that a routine maintenance programme is adhered to.

4.3 When responding to requisitions on title for the sale of a Multi-Unit Development property, inform prospective purchasers of the purpose of the sinking fund and the period over which it is intended the sinking fund will cover the needs of the Development.

4.4 Ensure that sinking fund monies are lodged in a bank account in the Management Company's name and that this account is separate to the Management Company service charges account. Payments or transfers from the Sinking Fund account shall require the formal approval of Management Company Directors.

5. Completion & Transfer Issues

Transfer of Control of the Management Company to Unit Owners (hereafter referred to as "Transfer") and Conveyance of ownership of the Common Areas to the Unit Owner Controlled Management Company (hereafter referred to as "Conveyance") in Multi-Unit Development are frequently contingent on the completion of the Development and/or the sale of the final Unit. In some instances, the absence of a uniform definition of "Completion" makes it difficult for Unit Owners and Developers to reach agreement as to the appropriate trigger points for Transfer/Conveyance, as relevant. This Code provides that Developers will not attempt to deem "Complete" any Development until the following have been certified by a professional: e.g. an architect/engineer.

- The terms of the relevant planning permission have been satisfied
- All relevant building regulations and other relevant statutory requirements e.g. fire, health and safety as set out by the Department of Environment, Heritage

and Local Government have been complied with, and:

- All issues on the snag list pertaining to the common areas/services have been addressed by the developer.

To facilitate transparency in this aspect of the process, Developers *shall*:

5.1 Advise purchasers of the intended trigger point/s for Transfer of Control of the Management Company to Unit Owners and for Conveyance of the Common Areas. Where a large-scale Development is planned for phased completion, any schedule for phased Transfer and Conveyance should be clearly set out in the contract for sale.

5.2 Where any delay in Completion and/or Transfer and Conveyance to a Unit Owner controlled Management Company is anticipated, advise Unit Owners of this at the earliest opportunity after this anticipated delay becomes apparent.

5.3 Advise the Unit Owner controlled Management Company with suitable advance notice, of their intention to convey ownership of the Common Areas and to convey title in a timely manner.

5.4 To facilitate a smooth transfer of control of the Management Company to the Unit Owners, the Developer Controlled Management Company shall arrange for Directors nominated by the Developer to resign from the Board of the Management Company. Unit Owners must be advised by the Developer Controlled Management Company of this step in advance (with at least 8 weeks notice), in order to allow sufficient time to identify appropriate Directors drawn from amongst their rank. Where a Developer nominated Director wishes to remain in place on the Board of Directors of the Management Company post Transfer to the Unit Owners any such arrangement should be agreed by vote at the meeting of the Company.

5.5 In the case of non-gated¹⁰ residential Developments containing road(s), water mains, etc., the Planning and Development Act 2000 and policy guidance issued by the Department of the Environment, Heritage and Local Government in February 2008, provide for the taking in charge of the core facilities of public roads and footpaths, public lighting, public water supply, foul and storm water drainage, public open space and unallocated surface parking areas, etc. by the Planning Authority. Where the Development is properly completed in compliance with the planning permission, the Planning and Development Act 2000 and above policy guidance provides for the prompt taking in charge by the Planning authority.

6. Snagging

For the purpose of this document, Snagging shall refer to the process of ensuring the satisfactory completion of the Development, through the identification and resolution of defects or outstanding works relating to common areas and services (encompassing both internal and external, structural and finishing issues) may be identified by a suitably qualified professional. Snagging issues in respect of individual units shall be resolved between prospective purchasers and Developers on a bilateral basis, and fall outside the scope of this Code.

As regards satisfactory completion of common areas, Developers shall:

- 6.1 Complete the Common Areas to the standards set out in the planning permission.
- 6.2 Comply with all relevant Building Regulations and other relevant statutory requirements e.g. fire, health and safety such compliance to be certified by a suitably qualified professional.
- 6.3 Prior to the vesting of control of the Management Company and Conveyance of common areas to the

Management Company, liaise through the Managing Agent with the Unit Owners or duly elected Members Committee, who may appoint a suitably qualified, professional to procure a full and final snag list on their behalf. The Developer shall liaise with the Unit Owners/Members Committee through the Managing Agent in addressing and resolving snagging issues in respect of the Common Areas.

- 6.4 Call on, or cause to call on, the Local Authority to “Take in Charge” the Development, as outlined in Section 5.5, once in the view of the Developer, it has reached the standard of completion set out in the planning permission, including as regards the finish of the common areas.

7. Dispute Resolution & Redress

In some instances, straightforward disputes between Unit Owners and Developers cannot be mutually resolved. Court proceedings can be lengthy and costly for all parties. Alternative mechanisms of resolving such circumstances may be appropriate.

In respect of snagging & completion issues Developers *shall*:

- 7.1 Set out in responses in Requisitions on Title the dispute resolution mechanism they intend to follow for Development level snagging issues.

8. Purchaser Information

Notwithstanding any items to be supplied in accordance with the provisions of sections 1 to 7 foregoing, Developers shall ensure that the following information is made available upon request to purchasers in Multi-Unit Developments:

- 8.1 A statement confirming the name, if known, of the Management Company established for the Development.
- 8.2 A statement confirming the level of Service Charge for the first year of the Development’s existence, with best

estimate forecasts of the service charge amount for years 2 and 3.

- 8.3** A statement confirming the establishment of a Sinking Fund, where relevant.
- 8.4** A statement specifying the trigger point or points for Transfer of Control of the Management Company to Unit Owners and for Conveyance of Ownership of the Common Areas to the Management Company.
- 8.5** Details of the services and public areas within the Development which may be subject to application to the local authority for taking in charge, and those which may remain under the sole control of the Management Company.
- 8.6** A statement confirming the name, if known, of the appointed Managing Agent.
- 8.7** Where Purchasers can source the National Consumer Agency Guide *'Property Management Companies and You'*.

9. Complaints

The complaints procedure to be applied under COP 1/o8 shall be as follows:

- 9.1** Complaints must be made in writing to the IHBA;
- 9.2** If a complaint in writing is received by the IHBA from a Purchaser regarding a Member and concerning a breach of this COP 1/o8 or if it appears to the IHBA that a Member has breached the code, the IHBA shall in the first instance write to the Member in question setting out the nature of the complaint or alleged breach, inviting the Member to provide a written response;
- 9.3** Any complaint received in relation to COP 1/o8, any breach or apparent breach of COP 1/o8 or the failure of a Member to respond to a request for information made under sub-paragraph (ii) above shall be dealt with under the IHBA Constitution and Rules (adopted 1st March 2005) and Article M of the CIF Constitution and Rules; and

- 9.4** In the event that a Member is found to be guilty of misconduct in relation to this code COP 1/o8 then, in addition to any other remedies available to the IHBA or the CIF, the IHBA may expel the Member from the IHBA and may publish notice of such expulsion or other sanction in the national and / or local press. This Code of Practice does not form part of any contract between the Member and the Purchaser and no agreement shall be deemed to exist between the parties.

10. Code of Practice Footnotes

- 1 Hereafter referred to as "the Code"
- 2 Multi-Unit Development is used to describe a building or a group of buildings including multiple self contained residential properties that share certain physical areas, such as car parks, entrance halls and gardens; and certain services, such as security, plumbing and waste disposal.
- 3 For the purpose of this Code of Practice, the term "Developers" shall be taken to include Developers themselves ("the developer"), their agents, nominees or further third parties appointed by "the developer" to coordinate, facilitate or manage the sales administration process of Units in a Multi-Unit Development.
- 4 This should include records in relation to the provision of estate services e.g. supplier and installation specifications, warranties and guarantees, commissioning certs, service specifications for mechanical and electrical plant
- 5 In accordance with guidance set out by the Department of the Environment, Heritage and Local Government
- 6 In the event that Directorial control of the Management Company has not yet passed to the Unit Owners.
- 7 All references in this Code of Conduct to the role and functions of Managing Agents will naturally be subject to regulatory measures as introduced by the NPSRA.
- 8 For the purposes of this Code, Developers liability in respect of service charges accruing to unsold units shall commence from time of issue of practical completion certificate or when the Development is insured, whichever is earlier. Services such as refuse collection on unoccupied units will be deducted from the service charge payment. Developers may be entitled to a refund on services they have paid in full for the block such as ESB and Insurance.
- 9 Exceptional cases where sinking fund may not be appropriate may arise. In such circumstances, Developers should make this clear in standard marketing materials.
- 10 Non-gated residential Developments refer to where public access is unrestricted



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