Management Fees and Service Charges Levied on Owners of Property in Multi-Unit Dwellings

national **consumer** agency
gníomhaireacht náisiúnta **tomhaltóirí**

putting consumers first

Management Fees and Service Charges Levied on Owners of Property in Multi-Unit Dwellings

October 2006

Report prepared for National Consumer Agency by DKM Consultants Ltd.
In association with Kevin O'Higgins Solicitors.

Executive Summary and Recommendations

Background

The property management sector has witnessed considerable growth over the past decade on foot of the housing boom and the growth in multi-unit developments in particular. The term property management can have different meanings for different people and it is clear from this research that the complex relationships between all of the different entities in the sector is a cause of real confusion to consumers and a contributing factor to the malaise whereby the consumer very frequently misunderstands what his/her rights and obligations are. It is important to understand the different stakeholders and their individual roles in the property management sector.

A Complex Area

In a recent Irish Times article1 the journalist wrote on the issue of management companies that there is "a widespread lack of understanding of what is admittedly a complicated arena". This comment could be applied to the property management sector generally and is a critical issue influencing a number of our recommendations. As a result, considerable attention is being devoted to key aspects of the property management sector by many different interest groups. The Labour Party, for example,

[1] City Living Property Supplement "Same story on service charges, Edel Morgan Irish Times 4th May 2006.

published a guide[2] for apartment owners on management companies at the beginning of July which sets out information on frequently asked questions for homebuyers.

The Management Company

In the case of multi-units developments and gated estates, such complexes will contain internal and external common areas, which are accessible to everyone who occupies the building. Typically, these would include the lobbies, halls, stairwells, lift, corridors and the roof. The owners share collectively the common areas and will have certain rights, obligations and duties in regard to them.

The need for a management company structure arose in order to 'manage' all of the common parts and services within a complex, not belonging to, or the responsibility of a single person. The management company is responsible for maintaining the structures in good order and repair, and particularly in the case of apartments having usually expensive lift apparatus, providing for a contingency or sinking fund to cover the substantial cost of repair or renewal over time. It is estimated that there are currently approximately 4,600 management companies, based on an analysis of management companies incorporated and registered with the CRO.

[2] Know your Rights – A Labour Party Guide to Management Companies and Taking in Charge, Labour Party, July 2006.

The Managing Agent

A key decision to be made by the members/owners of the management company concerns whether to manage the building themselves or whether to appoint a professional management agent to undertake full responsibility for the routine day to day management of the company and other related issues as they arise. The management agents are simply the servants of the management company who are hired by the management company to ensure that the company honours its obligations to the individual owners, its members, and that the individual owners, in turn, honour their obligations to the company and to each other.

The Service Charge

A key task of the management company is to ascertain and collect service charges from its owners/members. Management companies often engage the services of a property management agent and an architect initially to provide the initial estimate. The service charge represents the sum of money which the company will need to collect from all owners on a regular basis to pay for the expenditure incurred by the management company in carrying out its obligations. The use of a management agent will require the payment of a management fee, which is included in the service charge3. It is predominantly in regard to the lack of information surrounding the determination and level of service charges which led the NCA to commission this study. Service charges can have

[3] For the purposes of this report we assume that the service charge includes the management fee to the management agent.

significant financial implications for property owners and the NCA is keen to gain a greater understanding of the relevant issues.

Regulation of the Property Management Sector

The sector is currently not regulated, relationships between, and the roles and responsibilities of, the key stakeholders are not clearly defined, and there is often a lack of transparency when it comes to determining the level of service charges as well as how they are to be spent. A comparisons with the legislative environments which exist in other jurisdictions, notably the UK, Germany and Australia, suggests that we are legislatively passive in relation to the affairs of the management company, save in the matter of company law enforcement. In other words we have little or nothing in the way of express legislative provisions dealing with the sector and the complex relationship between the various participants. Similarly in regard to regulation of the property management entities - which is well established in Australia, covered by property legislation in Germany and is self-regulated by the Association of Residential Management Agents (ARMA) in the UK - there is no regulation of management agents in the Irish market.

However arising from the report from the Auctioneering/Estate Agency Review Group (July 2005) the Government is to set up a statutory National Property Services Regulatory Authority (NPSRA)[4] that will take responsibility for the licensing and

[4] The new body will be known as the National Property Services Regulatory Authority (NPSRA) and will be based in Navan, Co Meath, in line with the Government's policy of decentralisation. A Director of the NPSRA has recently been appointed.

regulation of all trading entities providing auctioneering, estate agency, property letting and/or property management services. The draft heads of the bill to establish the new regulatory body are currently being drafted (the Property Services Regulatory Authority Bill) by the Department of Justice, Equality and Law Reform. Legislation to accompany the establishment of the new body is expected late 2007. We support strongly the recommendations of the Auctioneering/Estate Agency Review Group and would suggest that, where possible, the recommendations that exist for the auctioneering/estate agency sector should be replicated in the property management sector.

The new National Property Services Regulatory Authority is to have a consumer information function. A number of our recommendations propose that the new Regulator and the National Consumer Agency should work closely together to ensure the consumers' interests are protected. As the overall regulator for the property sector, we recommend that the role of the new NPSRA should include regulation of management companies in addition to regulation of managing agents and consumer information.

Major Gaps in the Law covering Multi-unit Developments

The *Law Reform Commission* (LRC) recognises that there are major gaps in relation to the law which exists for multi-unit

developments and is currently carrying out a review which will address a number of issues surrounding the particular legislative needs of the sector. It is expected that it will make a number of recommendations, which will focus on putting in place a proper legal structure for multi-unit developments. A final report, following we understand a lengthy consultation process, is expected from the LRC over the next two months.

Separately the *Company Law Review Group* (CLRG) has prepared a position paper reviewing the legal provisions relating to management companies, the purpose of which is to simplify the law in this and other areas of company law. The CLRG has made a set of recommendations to the Minister for Enterprise, Trade, and Employment which will be incorporated in the draft company law legislation expected to go to Government in September. If accepted the recommendations will form the heads of a Bill to be drafted by end of 2007. We understand that the report includes a small number of recommendations which relate to the position of management companies in law and the rights of owners/members of management companies.

A Professional Association of Managing Agents

A key recommendation of this report is that a professional body should be established representing residential management agents to create awareness amongst the property sector as well as national and local government of the role of professional management agents. This body could be set up immediately and should mirror itself on the corresponding association in the UK, the Association of Residential Management Agents (ARMA).

The trend toward apartment living is a new phenomenon about which there is very little information. Our estimates suggest that there are some 500,000 persons living in multi-unit developments. In our consultations with representative bodies and with individual consumers as well as through the results of a small survey carried out for this study we were astonished by the absence of comprehensive consumer information. Buying an apartment/unit in a gated complex or housing estate is a part of life for an increasing number of people. Yet regulations and information are thin on the ground.

Consumer Information

The key issue of concern is consumer awareness and ensuring that the consumer has full information available to him/her when buying in a multi-unit development. The consultation exercise carried out for this survey together with the consumer survey suggests that there is a lack of understanding by owners and tenants of the various types of entities which exist in the property management sector, and of the legal responsibilities and obligations associated with the purchase of dwellings in multi-unit complexes. This report presents a number of checklists and information for consumers at different stages of the process which we consider should feed into a comprehensive booklet of essential consumer information which should be published by the National Consumer Agency, following consultation with the major stakeholders, including the Society of Chartered Surveyors, the National Property Services Regulatory Authority, estate agents

and legal expertise.

The purpose of this study is to examine legal and regulatory issues, the rights of property owners in relation to service charges and the determination of service charges, the role of the new National Property Services Regulatory Authority, develop a regulatory framework which would address regulatory powers and responsibilities for managing this currently unregulated sector of the economy and report on the key issues for consumers of property in multi-units developments or in ‘gated’ estates. The key output is a consumer checklist for potential buyers and a set of policy recommendations which are designed to provide better regulation from economic and legal perspectives, protect the rights of consumers and ensure a more competitive market. This study is very much intended to build on the research that is currently underway by the Law Reform Commission and the Department of Justice, Equality and Law Reform on the regulatory side. Moreover, it considers some other proposals which do not need to be legislated for and therefore could happen sooner than the proposals which have to wait for legislation.

In summary, the most important issues relating to management companies and multi-unit developments are as follows:

- Regulation of management companies and management agents and the powers given to the new NPSRA.
- The position of management companies in law and the rights of owners/members of management companies.
- Addressing the information deficit for existing and potential

owners/consumers in multi-unit development.

- Ensuring the transfer of control of the management company from the developer to the owners as quickly as possible.
- Ensuring transparency and reasonableness in the determination of service charges and the provisions for sinking funds.
- Ensuring that developers complete their developments within the terms and obligations set down in their planning permissions within a reasonable timeframe.

Recommendations

1. Regulation

Recommendation 1

The National Property Services Regulatory Authority Bill should be prioritised in the Government's programme to ensure that it is enacted as a matter of urgency.

Recommendation 2

Where possible the recommendations that exist for the auctioneering/estate agency sector should be replicated in the property management sector.

Recommendation 3

The NPSRA should consult with the Irish Financial Services Regulatory Authority (IFSRA) to establish best practice in regard to the financial arrangements of property management companies.

Recommendation 4

A similar proposal to the Property Services Statutory Interest Accounts used in Australia should be considered by the National Property Services Regulatory Authority in consultation with the Financial Services Regulator. The funds accumulated, based on an agreed percentage of the interest amount, could be accrued either for the benefit of the management company or for the Regulator, who would have responsibility for regulating management companies.

2. The Consumer

Recommendation 5

The National Consumer Agency (NCA), possibly in association with the Society of Chartered Surveyors and other key stakeholders in the property management sector, should compile a booklet of relevant information for potential buyers and owners of property in multi-unit developments and for members of management companies. This booklet should contain information like the respective roles of the owner, management company and management agent; what to look out for in a building; where to go to have an assessment of the state of maintenance/repair of the building; where to go for information or to make complaints; and the role of the Regulator. It should also contain a consumer checklist of issues to be aware of before buying into a multi-unit development. This information source should be available at all estate agents, solicitors and in information centres like the Citizen Information Centres and on the NCA website.

Recommendation 6

This booklet should be ready well in advance of the legislation establishing the NPSRA given the vulnerability of consumers in the interim and the likelihood that the primary focus of the NPSRA in its early days will be on the proposed licensing system.

Recommendation 7

It should be the responsibility of the purchaser's solicitor to ensure that the buyer is fully aware of, and understands, the

contents of this booklet, what he is taking on in buying into a multi-unit development and the various relationships of the main entities. This way the protection of the consumer is assured.

Recommendation 8

The NCA, as the voice of the consumer, should conduct a major representative consumer survey on consumer issues over the coming months to ascertain their views on the whole area of property management, including their views on management companies, management agents, management fees and service charges. It would be preferable if the result of this survey were ready before the report of the Law Reform Commission is published (expected after the summer). It could provide some useful information to the NCA for its response to the LRC report and the legislation establishing the NPSRA. Such a survey could be done periodically, say every three years, to monitor the impact of changes introduced over time.

Recommendation 9

In order to provide consumers (property owners/tenants) with relevant comparisons for their service charges, management fees and sinking fund allocations, the NCA or the NPSRA should undertake a national survey of service charges and management fees.

Recommendation 10

Invariably the lease document between the buyer and the developer/management company is drafted in turgid and

incomprehensible legal language rendering it difficult for the consumer to understand. While we accept the importance of the adherence to legal precedent and authority in the drafting of the lease, we recommend that the solicitor for the developer/management company provide to the owner/tenant, as consumers, a plain English summary of its essential terms, together with an explanatory memorandum as to how the particular multi-unit development is expected to operate.

3. The Management Company

Recommendation 11

There appears to be considerable confusion over the terms used to define the main players in the property management sector, most notably about the differences between management companies and management agents. Both terms are often used interchangeably. Thus it is recommended that once the developer has handed over control of the complex to the owners, there should be a name change from “management company” to “owners’ company” which is something similar to the term used in Australia to describe a management company (“Owners Corporation”). As well as eliminating the confusion, it would make it very clear to the residents of the complex that it is a company consisting of the owners of units in the building complex. It would also signify a new beginning. This should be the name from the outset and should be part of the Memorandum and Articles of Association establishing the company. We believe that this requirement should be requested by the Regulator and should be facilitated in company law.

Recommendation 12

There is no legal means for enforcing satisfactory completion of an estate. Indeed the definition of ‘satisfactory completion’ is open to considerable interpretation. The key issue is more to do with how to ensure that the developer completes the development or individual phases of his development within the terms and conditions of, and to the standards set down in, his planning permission.

As there is no obligation set down anywhere on the developer to complete a snag list in relation to the common areas, we believe that the contract between the developer and the management company to convey the title of the buildings and common areas to the management company should include a contractual obligation on the developer to attend to the management company’s snag list prepared by an independent architect/surveyor. The developer should be required to furnish a completion certificate certified by the architect on completion. This certification should confirm that the architect is satisfied that the common areas and other cosmetic finishes are completed in accordance with the developer’s obligation under the lease. The independent building surveyor should prepare a professional report on any outstanding matters that need to be addressed. This is to be done and completed post the snag list or within 3 months from the date of completion of the last unit within the development.

Recommendation 13

While recognising that during the construction phase of the

development the developer will necessarily require to control the management company, it is important that the transfer of control to the owners from the developer happens as quickly as possible. Subject to recommendation 12 being workable in practice, the developer's solicitor should (at no cost) transfer ownership of the building to the owners within three months of the completion certificate being issued. On transfer to the owners, they will elect their own Board of Directors to manage the complex and will regulate the voting rights attaching to shares, including subscriber shares in the management company. (The original subscriber members are required to resign 60 days after the last unit is sold - a provision which should be provided for in the management company agreement with the developer). If the owners have not taken control of the management company from the developer within the specified three month period, the matter should be referred to the NPSRA.

Recommendation 14

We believe that a strong case exists for restricting the voting rights to one vote per household, irrespective of tenure. We are of the view that the right to participate in the management company should be reserved for a) owner occupiers and b) tenants (unless the latter have no wish to participate). In relation to tenants we would propose that the tenant's authority to vote should only apply in regard to normal expenditure on a day-to-day basis. It should not extend to matters of a capital nature which would have implications for payment to the sinking fund.

Recommendation 15

The regulation of management companies should be a matter for the National Property Services Regulatory Authority (NPSRA) and any matters which the Regulator considers appropriate for a management company should be catered for in the Memorandum and Articles of Association of the company. We would see company law facilitating those requirements.

Recommendation 16

Professional bodies like the IPAV, the IAVI and the IPMFA should provide training courses for the officers of management companies, the costs of which would be covered by the management companies. The course content might include, for example, legal obligations on management companies, description of responsibilities of elected officers (chairperson, secretary, treasurer), where to get help (contact lists of accredited bodies), financial obligations and maintenance responsibilities.

4. The Management Agent

Recommendation 17

A professional body should be established representing residential management agents to create awareness amongst the property sector as well as national and local government of the role of professional management agents. This could be an independent body in its own right or could exist under the auspices of the Irish Property and Facilities Management Association (IPFMA). The association would be the Irish Association of Residential Management Agents (IARMA) and should mirror itself on the corresponding association in the UK called the Association

of Residential Management Agents (ARMA).5

Recommendation 18

We welcome the recommendation of the Auctioneering/Estate Agency Review Group regarding the introduction of Codes of Ethics and Practice which would be adopted by all license holders. We believe that such a code of practice should be drawn up by the new IARMA in association with the NPSRA and the Society of Chartered Surveyors (SCS). All members should undertake to comply with it6. It should relate to residents' rights and management practice and impose minimum obligations on management agents.

Recommendation 19

The new association IARMA should develop, in conjunction with the NPSRA, a range of nationally recognised professional qualifications and training courses for those involved in property management.

5. Service Charges and Sinking Funds

Recommendation 20

Service charges should be determined by a professional quantity surveyor following consideration of the drawings,

---

[5] http://www.arma.org.uk

[6] In the case of ARMA all of its members endorse, accept and undertake to comply with a Code of Practice relating to service charges published by the Royal Institution of Chartered Surveyors. The general terms of this code falls under the three headings provided above.

mechanical and electrical services, and the obligations regarding services generally set down in the lease between the buyer and the developer. The determination of service charges should be simple, reasonable and fair, in the interest of good estate management. They should be levied by reference to floor area (on a square metre basis). In the case of mixed multi-unit developments comprising different dwelling types, it is recommended that where elements clearly and unquestionably are only attributed to the apartment block, they should be excluded from the calculation of the service charge for other units in the development, which should be costed separately. The initial service charge should be set by the developer, and the formula for apportioning it across the units should be written into the lease. In the case of a dispute over service charges, the Regulatory Authority should have the powers to deal with disputes in the case of owners. When there is no resolution, the dispute should be referred to the Court to justify the charges sought.

Recommendation 21

A consumer should be given, on demand, a written summary of costs incurred by the developer/management company and for which a charge is payable or has been demanded. This summary should specify the amount which the consumer is obliged to pay, the total service charges for the relevant building, the aggregate amount outstanding in the account; the credit of the owner both at the beginning and at the end of the accounting period. He should also be supplied with a certificate from a qualified accountant, that in his opinion a statement of account deals fairly with the matters

with which it is required to deal, and is sufficiently supported by accounts, receipts, and other documents which have been provided to him. The consumer should be entitled to inspect such records upon the payment of a modest fee. The same rights should apply to the consumer in respect of insurance.

Recommendation 22

Management companies should be required to plan ahead for five years when calculating their service charges. This would protect and inform the consumer.

Recommendation 23

A sinking fund should be mandatory in all cases and this should be provided for in the lease. Such funds should be ring fenced from routine day to day expenditure. An annual appraisal of plant and equipment (e.g. lifts, roof) comprising the common areas or part thereof should be undertaken. The ‘sinking fund’ should be determined based on benchmarking similar buildings in regard to cost for painting, mechanical and electrical, fire system, age and lifespan of building, and a provision should be made every year to avoid a levy. The NPSRA should consult with the financial services regulator, IFSRA, in order to ensure the adequacy and management of the sinking fund as well as the adequacy of the insurance provision.

Recommendation 24

The Fingal county manager in a report to Fingal County Council in April 2006 recommended that the means of calculation of the

amount of the sinking fund ought to be set out in legislation and that the calculation in every instance be freely available to all owners. It is recommended that this concept together with the provision of information to the consumer, so that he/she understands what the service charge is and how it is assessed, why he/she pays it, what it covers, the existence of a sinking fund, and the importance that it be prudently and adequately maintained – should be introduced in the interest of transparency.

6. Other Issues

Recommendation 25

It is recommended that planners should ensure that they monitor planning permissions and that the developer honours his obligations under the terms of his planning permission. In doing so account should be taken of the developer's track record when considering further applications for permission. Section 35 of the Planning and Development Act 2000 provides that the planning authority can refuse planning permission on the basis of past failures to comply. We have no information on the extent to which planning authorities invoke this provision but it provides a mechanism for ensuring that developers complete their developments in line with the conditions of their permission. The section states that if the planning authority forms the opinion that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in

accordance with such permission if granted, then planning permission should not be granted[7].

[7] Section 35 (1) (b) (i) and (ii) Planning and Development Act 2000.

1.0 Introduction

1.1 Background

The National Consumer Agency (NCA) was established by the Minister for Enterprise, Trade and Employment last year, following the recommendations of the Consumer Strategy Report, published in April 2005. The purpose of the NCA is to raise the profile of consumer issues, provide consumers with a strong and effective voice and promote and safeguard the interests of consumers. An interim board of the NCA has been appointed and it has agreed to undertake a number of studies in areas that impact on consumers.

Accordingly the interim board commissioned DKM Economic Consultants in association with Kevin O'Higgins Solicitors to undertake a study on "Management fees and service charges levied on owners of property in multi-unit dwellings". Given the unprecedented increase in the number of new houses and apartment dwellings in recent years, comprising mostly apartments in the major urban areas, there has been an associated increase in the demand for property management services. The sector is currently not regulated, relationships between, and the roles and responsibilities of, the key stakeholders are not clearly defined, and there is often a lack of transparency when it comes to determining the level of service charges as well as how they are to be spent. As a result numerous problems have emerged in this sector and the NCA is keen to gain a greater understanding of the key issues relating to the management of multi-unit complexes and 'gated' estates and of the levying of service charges and management fees on apartment and home owners.

We are conscious that other work is underway on aspects of the property management sector which we refer to in the relevant sections of this report.

The first includes a review which has been underway for some time now by the Law Reform Commission (LRC). The LRC recognises that there are major gaps in relation to the law which exists for multi-unit developments and its study will address a number of issues surrounding the particular needs of the sector. It is expected that it will make a number of recommendations, which will focus on putting in place a proper legal structure for multi-unit developments. A final report, following we understand a consultation process, is expected from the LRC over the next two months.

Separately the Company Law Review Group (CLRG) has prepared a position paper reviewing the legal provisions relating to management companies, the purpose of which is to simplify the law in this and other areas of company law. The CLRG has made a set of recommendations to the Minister for Enterprise, Trade, and Employment which will be incorporated in the draft company law legislation expected to go to Government in September. If accepted the recommendations will form the heads of a Bill to be drafted by end of 2007. We understand that the report includes a small number of recommendations which relate to the position of management companies in law and the rights of owners/members of management companies. Two such recommendations include the provision of a statutory definition within the Companies Act of a “management company” a well as a menu of choices for various company type structures for management companies for persons incorporating management companies.

There is also the report from the Auctioneering/Estate Agency Review Group which was completed in July 2005 and made a comprehensive set of recommendations to the Minister for Justice, Equality and Law Reform for the auctioneering/estate agency sector. Arising from that report the Government

is to set up a statutory National Property Services Regulatory Authority[8] (NPSRA) that will take responsibility for the licensing and regulation of all trading entities providing auctioneering, estate agency, property letting and/or property management services. We understand that the draft heads of the bill to establish the new regulatory body are currently being drafted (the Property Services Regulatory Authority Bill) by the Department of Justice, Equality and Law Reform. Legislation to accompany the establishment of the new body is expected late 2007.

While the recommendations arising out of both of these studies will require legislation to be drafted, subject to approval by Government, it is likely to be 2008 before any changes to the law governing this whole area can be introduced. This study is very much intended to build on the research that is currently underway. Moreover, it considers some other proposals which do not need to be legislated for and therefore could happen sooner than the proposals which have to wait for legislation.

A recent report published by the Private Housing Unit of Dublin City Council[9] considers how apartment developments are operating. The report contains useful material on a wide range of practical and legal issues to do with increasing the sustainability of successful apartment living, ranging from clarifying the role of Dublin City Council in making apartment living more attractive to developing a group of stakeholders to improve design, construction, quality and cost of management and maintenance. This report recommends that local authorities should act as agents of the new National

[8] The new body will be known as the National Property Services Regulatory Authority and will be based in Navan, Co Meath, in line with the Government's policy of decentralisation.

[9] Successful Apartment Living – A Role for Local Authorities in Private Residential Management Companies, Evelyn Hanlon, Private Housing Unit, Dublin City Council, July 2006.

Property Services Regulatory Authority, taking responsibility, until such time as the Regulator is established, for registration of management companies, licensing managing agents and supporting apartment owners.

There is no doubt that this whole area of property management is receiving a considerable deal of attention from many different interest groups including political parties. The Labour Party, for example, published a guide[10] for apartment owners on management companies at the beginning of July which sets out information on frequently asked questions for homebuyers. Apart from legal and regulatory issues, the primary objective of this study is the protection of the consumer. Accordingly a key output from this study for the NCA is a comprehensive consumer checklist for potential buyers of homes in multi-unit developments.

1.2 Assignment Brief

The study covers economic, regulatory and legal issues. The brief requires the consultants to prepare a report which

- provides a profile of the Irish market in terms of suppliers of property management services and a clear explanation of the particular relationships between the main stakeholders (developers/management companies /management agencies /owners /tenants) in the property management sector;
- carries out a review of international best practice which enables consumers to easily and effectively manage their complexes;

[10] Know your Rights – A Labour Party Guide to Management Companies and Taking in Charge, Labour Party, July 2006.

- considers the determination of the management fee and service charge, as governed by the provisions of the lease between the owner and the management company;
- addresses the legal responsibilities attached to such leases as well as other legal issues in respect of the rights and obligations of property owners and tenants;
- proposes a regulatory and legal framework based on best practice internationally;
- considers the key issues for consumes in respect of buying a unit in a multi-unit development and whether differing issues arise for consumers in different unit types.

The overall objective of the study is to develop policy recommendations which ensure that consumers' rights are protected while at the same time improving regulation of the sector and delivering a more competitive market. A consumer checklist is also prepared covering the key issues for potential buyers of properties in such complexes.

1.3 Methodology and Report Structure

The approach comprised primarily desk research, which involved a review of the literature and best practice in other jurisdictions, notably the UK, Germany and Australia. We consulted widely with a number of expert groups and government departments, including the Law Reform Commission, the Estate Agency Review Group, the Private Residential Tenancies Board, the Company Law Review Group, the Departments of the Environment, Heritage and Local Government, and Justice, Equality and Law Reform, political parties as well as with a number of individuals representing consumers, management companies and management agents. We also had discussions

with a number of local authorities and public sector agencies.

Although the brief did not require the completion of a consumer survey we prepared a short two page questionnaire to ascertain the views of owners and tenants. This form is attached in Appendix 8 and was of some assistance in preparing the consumer checklist.

The report is set out as follows:

In Section 2 we consider the increasing trend towards multi-unit developments, the reasons for the existence of property management companies, the various entities in the property management sector and we examine their duties and obligations.

Section 3 present a review of international best practice, focusing on Germany, the UK and Australia.

Section 4 examines legal and regulatory issues. It acknowledges the other research that is ongoing in this whole area and considers a number of the legal aspects governing the legal responsibilities of the main stakeholders, the rights of property owners in relation to service charges and the determination of service charges.

This section also considers regulation of the sector, the role of the new National Property Services Regulatory Authority (NPSRA), its relationship with other agencies, such as the NCA, the Irish Financial Services Regulatory Authority (IFSRA) and the Private Residential Tenancies Board (PRTB). A regulatory framework will be proposed which would address regulatory powers and responsibilities for managing this currently unregulated sector of the economy.

Section 5 reports on the key issues for consumers of property in multi-units developments or in ‘gated’ estates. The key output of this section is a consumer checklist for potential buyers.

Section 6 contains the main conclusions and a set of policy recommendations which are designed to provide better regulation from economic and legal perspectives, protect the rights of consumers and ensure a more competitive market.

In the course of our work we have consulted extensively with a number of individuals and organisations, representing consumers, management companies and management agents and had discussions with agencies covering the public sector. We would like to register our appreciation for the high level of co-operation and assistance received from all concerned.[11]

[11] A full list of groups consulted is attached in Appendix 9.

2.0 Structure of the Property Management Sector

2.1 The Changing Pattern of New Build

There is a long tradition in Ireland of home ownership. It has been a feature of Irish culture for many decades. For most people in a position to do so, the purchase of a home is seen as a substantial and safe investment, which they expect to grow in value over the years. These people tend to take a source of pride in their homes and accept that investing a little time and money in their homes over the years on maintenance and improvement will add value to their homes and improve their quality of life.

According to the 2002 Census, houses accounted for 93% of the housing stock built in or before 1980. Moving to the period 1981-2002, the Census reported the proportion of houses built between 1981 and 2002 had declined marginally to 90% with apartments increasing their share to 10%. In the case of house owners, the tradition has been that each owns the freehold of his property and is solely responsible for looking after its upkeep.

Table 2.1: 2002 Housing Stock: Classified by Type and Period in which Built

Period Built	Houses	Apartments
Up to 1980	93%	7%

1981-2002	90%	10%

(1) Source: Housing Volume 13, Census 2002.

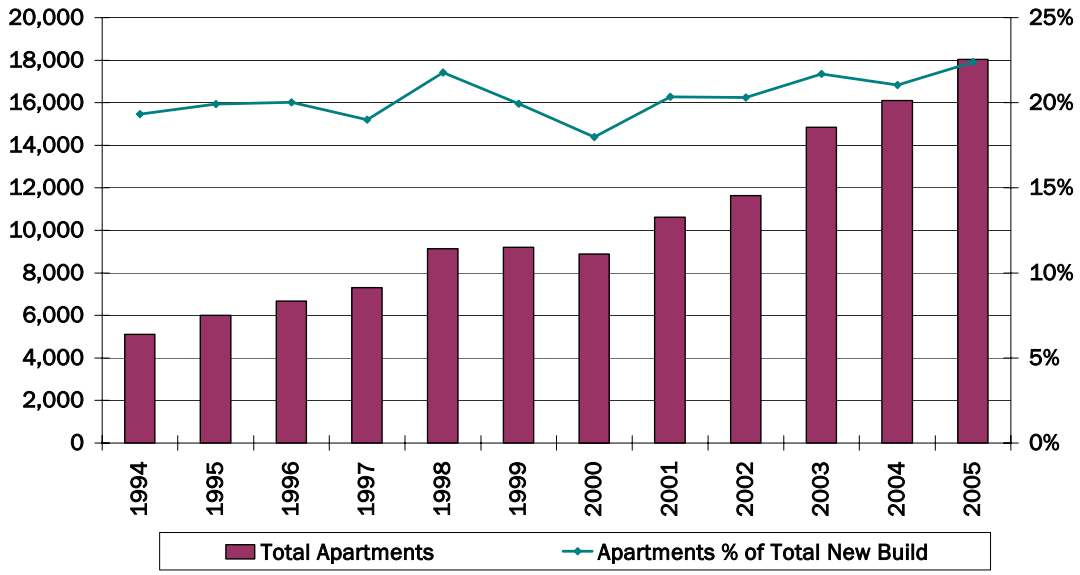
The growth in multi-unit developments is apparent from a classification of housing units by type of building. The 2002 Census showed that 210,656 persons lived in 110,458 apartments, almost 9% of total dwellings and almost 6% of the total population. This corresponds to an average household size of 1.9 persons, representing probably many single people and couples without children. The Table was previously provided in the 1991 Census and showed that 116,779 persons (3% of the population) lived in 49,938 multi-unit dwellings (5% of total dwellings)[12].

Looking at housebuilding trends over the past twelve years of the current housing boom, the level and pattern of newbuild has changed somewhat. The total supply of new dwelling units since 1994 amounted to 600,000, representing 36% of the total estimated housing stock at the end of 2005. The composition of newbuild since 1994 shows an unprecedented increase in the total number of apartments built over that period, although there has been an equally significant increase in the number of houses built. Consequently the proportion of apartments in the total has not changed by much (at around 20-23%) but the number of apartments built over the last twelve years has increased almost fourfold, from 5,000 to 18,000 nationwide. In Dublin, where 18,000 new units alone were provided in 2005, 9,500 (52%) were apartments compared with only 2,600 or one-third of the total newbuild in 1994.

Figure 1: Number of Apartments Built as Percentage of Total Dwelling Units

[12] This information is only provided in the Census every 10 years. In 1991 the classification for multi-unit dwellings included institutions, hotels and hospitals, which would explain the relatively high average dwelling size calculated for 1991 (2.34). Thus the numbers actually living in residential multi-unit dwellings would even be less than these figures suggest in 1991.

Built across the State



Across the country, the trend toward apartment building is concentrated in the urban locations and in the commuter belt around Dublin. Of the 18,000 apartment built in 2005, the Greater Dublin Area13 provided 11,305 (63%) of them and Cork provided 1,629 (9%). However apartments as a percentage of the total newbuild last year accounted for 41% in the Greater Dublin Area and was at or above the national average of 22% in Limerick, Kildare and Wicklow.

Table 2.2: Counties Building 400 or More Apartments in 2005

County	Individual House	Scheme House	Apartments	Total Dwellings	% Apartments
Dublin	973	7,504	9,542	18,019	53%
K,M,W	1,587	6,461	1,763	9,811	18%
GDA	2,560	13,965	11,305	27,830	41%

[13] Dublin, Kildare, Meath and Wicklow comprise the Greater Dublin Area (GDA).

Cork	2,189	5,024	1,629	8,842	18%
Galway	1,852	1,952	859	4,663	18%
Limerick	811	1,539	793	3,143	25%
Kildare	558	2,244	782	3,584	22%
Wicklow	423	1,412	506	2,341	22%
Meath	606	2,805	475	3,886	12%
Kerry	1,338	1,431	414	3,183	13%
Louth	443	1,352	400	2,195	18%
Rest of Country	9,582	10,436	872	20,890	4%
TOTALS	**20,362**	**42,160**	**18,035**	**80,557**	**22%**

K,M,W = Kildare, Meath and Wicklow

Going back to the 2002 Census figures, and adding in the over 60,000 apartments built over the last four years, and assuming an average household size of 1.9, this implies that a further 114,000 persons moved into apartments over that period. Thus it is estimated that some 325,000 persons were living in apartments, representing almost 8% of the population at the end of 2005.

While the data reports apartments separately, which are generally provided in blocks of two or more units, known as a complex, it is the case that many of the other units provided, whether individual houses or scheme houses, can also be provided in structures which have come to be know as multi-unit developments or ‘gated estates’. Such developments are to be distinguished from the traditional ‘private estate’ in that they consist of privately owned residential sites bought originally as private lands by the developer of the site who takes full responsibility for it until he transfers it to the owners of the complex (management company). There are further variations such as the

provision of apartment complexes in mixed-use developments which often comprise retail or office space below apartment complexes for example. We estimate that the number of persons living in multi-unit developments, including apartments, could be closer to 500,000 (DKM estimate). The 2006 Census results, expected later this year, will provide a more robust estimate.

2.2 The Need for a Management Company

In the case of multi-units developments the owners and tenants, where they exist, share occupation of the complex which is divided into individually owned and occupied units. By their nature, such complexes will contain common areas, which are accessible to everyone who occupies the building, as well as their invitees and licensees. The common areas in a private development of self contained individual houses would relate solely to the external areas, such as the green open spaces and car parking areas around the development. In the case of a multi-unit development, however, the common areas comprise both external common areas and internal common areas. Typically, these would include the lobbies, halls, stairwells, lift, corridors and the roof. It would also invariably include the central heating apparatus such as the boiler and, in essence, the entire structures of the individual apartments. Thus the owners share collectively the common areas and will have certain rights, obligations and duties in regard to them.

The need for a management company structure therefore arose in order to ‘manage’ all of the common parts and services within a complex, not belonging to, or the responsibility of a single person. The management company is responsible for maintaining the structures in good order and

repair, and particularly in the case of apartments having usually expensive lift apparatus, providing for a contingency or sinking fund to cover the substantial cost of repair or renewal over time.

In the case of such collective ownership a ‘management company’ is the usual vehicle by which the owners take responsibility for maintenance and services and for ensuring that the buildings in the complex and the common areas are maintained to a high standard for the benefit of all concerned. The management company effectively becomes the ‘landlord’ and assumes the obligations of the landlord under the lease. Thus an individual apartment owner has two legal interests in his property: as the legal owner of his dwelling unit and as a part owner of the management company which owns the freehold.

The management company is invariably a company limited by guarantee and incorporated under the Companies Act 1963 - 2005. The full responsibilities of the management company are outlined in the company’s Memorandum and Articles of Association and in the agreement between the management company and the developer, following the transfer of the common areas. This would be underpinned by the management company’s obligations in the lease.

In new developments generally, the practice is that a management company is incorporated by the developer or his solicitor before any units are sold. Normally, in apartment developments control of the management company remains with the developers until such time as the scheme has been fully completed, at which stage the common areas, which up to then would have remained in the developer’s ownership, are transferred to the management company. When the apartment owner would have purchased

the apartment he would have received a solicitor's undertaking from the solicitor acting for the developer to hand over a certified copy of the Deed of Transfer of the common areas 'when to hand'. Frequently, there can be a very considerable time lag before the transfer is effected with little or no means of compelling the developer when to do so.

A key decision to be made by the members of the management company concerns whether to manage the building themselves or whether to appoint a professional management agent to undertake full responsibility for the routine day to day management of the company and other related issues as they arise.

We consider the main duties and obligations of management companies and the management agents under Section 2.5.

2.3 The Property Management Sector – Main Entities

The whole area of property management has seen considerable growth over the past decade on foot of the housing boom and the growth in multi-unit developments in particular. The term property management can have different meanings for different people and it is important to understand the different stakeholders and their individual roles in the property management sector. In an Irish Times article14 earlier this year the journalist wrote on the issue of management companies that there is "a widespread lack of understanding of what is admittedly a complicated arena". This comment could be applied to the property management sector generally.

The different entities which one tends to come across are as follows:

[14] City Living Property Supplement "Same story on service charges, Edel Morgan Irish Times 4th May 2006.

a) The developer/builder will form a management company prior to commencement of construction. At that stage the developer and his solicitor will frequently be the main shareholders. As units in the development are sold, the new owners will become members of the management company but the developer will tend to retain the largest shareholding at this stage.

b) In the early stages the developer/management company may appoint a management agent to be its agent for the management of the common areas of the property. The agent's obligations to the management company are set out under Section 2.5.2. At an earlier stage too the developer will likely have appointed a selling 'estate' agent to market the development. The management agent and the selling agent can be the same company, as many estate agents offer a property management service, or they can be separate companies.

c) As units in the development are sold off by the estate agent, the developer can remain the dominant shareholder in the management company. The new owners will not yet have control of their management company. As more and more units become occupied a group of residents can form a residents' association. The purpose of the residents' association is often primarily to exert pressure on the management agent. However, an association as such has no legal status or right of representation on behalf of its members, unlike a formally constituted and incorporated management company. It can often be the case that the role of a residents' association can become redundant with the establishment of a management company and that the persons leading the residents' association tend to be those who become officers of the management company,

d) Many leases will contain a clause which states that when the last unit in

the complex is sold by the developer the transfer of ownership of the building to the owners is completed by the developer's solicitor and the developer must relinquish any interest in the company. In this situation the owners do not need to consider the formalities of incorporating a new company.

e) Many multi-unit developments will comprise a mix of owners and tenants, the latter occupying the units owned by non-residents or investors, who can often be difficult to get in touch with. In these situations investors can, individually, often appoint a separate management (letting) agent to look after their own units only. The property management service in such situations will include finding a suitable tenant, arranging the lease, collecting the rent and dealing with other tenancy issues that arise. This agent tends to be separate to the overall management agent appointed by the management company although in some cases the agent may be the same firm as the agent managing the whole development, if the management agent's services extend to residential letting and managing services.

It seems clear, therefore, that the multi-layered relationships associated with multi-unit developments together with the overlapping and similar sounding service providers is a cause of real confusion to consumers and a contributing factor to the malaise whereby the consumer very frequently will misunderstand what his rights and obligations are and to whom they are owed [see Recommendation 11]. The box diagram on the next page provides a brief summary of the key stages involved in the development and sale of a multi-unit complex and the relationships between the main stakeholders.

The Relationships between the Main Stakeholders in the Development of a Multi-unit Complex

DEVELOPER

plot of land/Site

Receives planning permission

sets up

Builder / Developer
ABC Developments Limited

Management Company
ABC Management Company
with Board of Directors (Min. of 7 including developer and solicitor)

- Mgt. Co. formed to eventually take over control of common areas
- Builder/Developer owns the work in progress and the site
- Solicitor draws up an agreement between builder/ developer and new Mgt. Co.
- Solicitor draws up a lease between the Mgt. Co. and the apartment owners
- Mgt. Co. eventually becomes the freehold owner of the common areas

Managing Agent
XYZ Managing Agent
(Initially appointed by Builder/Developer until Mgt. Co. decides otherwise)
Responsibilities include:

- Preliminary work for the Mgt. Co.
- Preparation of annual budgets
- Organising suppliers and service contracts
- Determination of service charges including the initial rate
- Issuing and collection of service charges
- Maintenance of common areas and landscaping
- All other aspects of maintenance
- Attending AGMs of Mgt. Co.

Complex completed
Ready for sale

Selling Agent
Marketing and sale of units

Block insurance in name of management company/developer
Units are sold to leaseholders - either owner occupiers or investors – investor may hire his own management (letting) agent
On sale of units to leaseholder the developer's solicitor issues:

- a membership certificate to the leaseholder
- an insurance letter of indemnity for each unit showing interest of the apartment leaseholder and or/mortgage company.

Solicitor for developer applies to transfer reversionary title to Mgt. Co. after last unit is sold.
At any stage some owners may be invited/offer to become Directors of the Mgt. Co. This is an AGM matter.
Mgt. Co. assumes responsibility, on behalf of each owner, for the complex.
Once owners take control of the Mgt. Co. they can keep the original managing agent or they can replace him.

2.4 The Property Management Sector – Size of the Market

We are primarily concerned here with addressing the question: how many residential property management agencies are currently operating in Ireland? The starting point is official sources such as the Central Statistics Office (CSO) and the CRO (Companies Registration Office). These differentiate economic activity using the NACE[15] classification. The relevant NACE codes in this case are as follows:

Table 2.3: The NACE Classification of Real Estate Activities

Code	Description
70.3	**Real estate activities on a fee or contract basis**
70.31	- Real estate agencies
70.32	- Management of real estate on a fee or contract basis

Property management agencies fall into code 70.32 (sometimes denoted 70320). The related code 70.31 covers estate agents. The two groups combined make up code 70.3: “Real Estate Activities on a Fee or Contract Basis”.

However, Code 70.32 does not differentiate between residential and non-residential property management. The latter covers office, retail, institutional

[15] The NACE classification is a coding system used to define companies according to their principal economic activity.

and industrial property, and as such is a larger and better-established sector than residential property management alone. A further complication is that many companies that provide property management services are also estate agents, and if the latter is their primary activity, then they would probably be listed under code 70.31 in the official statistics rather than 70.32.

The CRO requires that all limited companies designate a NACE code for their primary activity, but their data would not include businesses that are not limited companies. The CRO does not provide an analysis of company numbers by NACE code, and it was beyond the scope of this study to analyse their records to identify which have the requisite code[16].

The CSO maintains two datasets that analyse firms by NACE code. The first is the Business Register, which aims to capture all businesses in the country. This is still under development, and the CSO is not in a position to provide exact data from it. However, it was able to indicate that the number of businesses in the Register by NACE code 70.32 was between 1,000 and 1,500.

The second source in the CSO is the Annual Services Inquiry (ASI), the latest published version of which is for 2003. The ASI 2003 indicates 1,565 firms under code 70.3, which includes estate agents and property management agencies. The CSO does collect data for the 70.31 and 70.32 codes, but cannot disclose data on code 70.32 for confidentiality reasons. It does, however, indicate that in 2003 there were between 500 and 1,000 firms under this code. This is considerably less than recorded in the Business Register, whose data relate to three years later. This could reflect rapid

[16] The CRO does provide data to bulk data customers (marketing and credit analysis firms), who are in a position to analyse them by NACE code. However a fee generally attaches to these services.

growth in the number of such businesses in the meantime, and possibly that the ASI was not comprehensive with respect to very small firms[17].

An alternative source of information is the Golden Pages. A search of www.goldenpages.ie on 10th May 2006 for "property management" returned 339 entries. Searching for "property management" and location "Dublin" returned 187 entries, 55% of the total. As with the official sources, the Golden Pages category does not differentiate between residential and non-residential property management businesses, though some entries do contain additional information and this usually indicates that the firms in question are involved in both sectors. In any event, comparisons with the CSO data indicate that the Golden Pages is not a comprehensive source.

IDS MediaGroup is another firm that provides data by activity on Irish businesses. Its records indicate that in late 2005 there were roughly 450 firms under the code 70.32. Again, this includes both residential and non-residential property management businesses, and it is apparently not comprehensive.

The Review group established to carry out the Auctioneering/Estate Agency Review[18] only strayed into the area of property management as many auctioneers provide the service. Their report noted that there were 2,103 licenced auctioneers in 2004 plus there were likely to be a number of auctioneers and estate agents operating without a licence.

In summary, we cannot say with confidence the number of residential property management agencies currently operating in Ireland. There appear

[17] A recently published study by DKM for the Small Business Forum of Forfás found that the ASI did not appear to be a comprehensive source for very small businesses. http://www.forfas.ie/sbf/webopt/sbf_dkm_background_report_webopt.pdf

[18] Auctioneering/Estate Agency Review Group Report to the Minister for Justice, Equality and Law Reform, July 2005.

to be in excess of 1,000 property management businesses in operation, but there is no split between numbers dealing with residential/non-residential property. It is also the case that many of the firms operating as residential property management agencies are also or even primarily estate agents. We refer later to the establishment of the National Property Services Regulatory Authority, legislation for which is currently being drafted. If the Regulatory Authority requires that all businesses operating in the sector must be registered, this will give a comprehensive assessment of the numbers involved, as well as other useful information such as size and location.

In regard to management companies, it is not possible to ascertain the number of companies which exist. It has already been acknowledged that there is likely to have been considerable growth in the number of management companies reflecting the boom in residential building. One industry source has estimated that there are currently approximately 4,600 management companies, based on an analysis of management companies incorporated and registered with the CRO. Based on the previous estimate of approximately 500,000 persons living in multi-unit developments, this corresponds to 109 persons per management company, or 57 dwelling units *on average* per management company, assuming an average household size of 1.9 persons (DKM estimates).

2.5 Duties and Obligations of the Key Players

There are clearly defined roles for management companies, management agents and consumers/owners which need to be understood by all parties concerned, especially by the consumer. The management agents are simply the servants of the management company who are hired by the management company to ensure that the company honours its obligations to the individual owners, its members, and that the individual owners, in turn, honour their

obligations to the company and to each other.

2.5.1 The Role of the Management Company

The management company concept is perhaps unique in that it requires a long term commitment of time, effort, organisation skills and hard work from willing owners to engage in duties, for which they generally receive no remuneration. The Memorandum and Articles of Association of the company regulate the activities of the company and its members. They say what the company may or may not do. The officers of the company are its directors and company secretary. The owners in the complex are the members of the company and have rights which are attached to each share in the company, which are also set down in the Articles of Association.

The Articles specify the method by which directors are appointed and removed, the appointment of a chairman, voting procedures, procedures at board meetings and AGMs, and regulations concerning the transfer of shares in a company and the admission of new members. Membership of the company is restricted to persons who are owners of units in the complex and only those members who have paid every subscription and other sum (if any) due and payable to the company in respect of membership, are entitled to vote on any question either personally or by proxy.

The directors assume responsibility, on behalf of each owner in the complex, for ensuring the proper management of the building and for carrying out the wishes of the majority of members expressed at members' meetings. Collectively the directors of the company comprise the Board of Directors.

The functions of the management company, which are generally delegated to the members of the board, include the following:

a. Obtaining and arranging insurance of the building.

b. Repairs, maintenance and major works to ensure the building is maintained in a good condition for the residents.

c. The setting up of a bank account for the receipt of service charges from the members/owners and for the provision of a ‘sinking fund’ to cover anticipated expenditure. It is important to stress that the monies in such a bank account belong to the property owners who are the members of the management company.

d. The provision of services, such as heating, lighting in common areas, cleaning, grounds maintenance.

e. Financial matters including the preparation of annual income and expenditure accounts as well as the budget estimates for the following year, the determination and apportionment of the service charge, the maintenance of accounting records and the production of an audited set of annual accounts.

f. Security of the property.

g. Keeping the members informed about what is going on with the property.

There is a further series of duties which the company secretary must assume as his responsibility, such as convening board meetings, preparing minutes of meetings, keeping the company’s statutory books up to date and filing returns to the CRO. Where a company secretary fails to fulfil his duties satisfactorily, the management company can be struck off. This can happen either before the developer has relinquished his interest in the management company, or after the owners have taken control of the management company. We consider the issue of struck off companies under Section 4.3.

2.5.2 The Role of the Management Agent

If the management company believes that the task of managing the building is an arduous task which would require more resources than available to it, it can appoint a management agent to carry out specific duties set down by the management company or a range of services agreed between the management company and the management agent. It authorises the agent to act for it in its name and on its behalf, at the company's expense, to perform certain functions, which include management of the common areas of the property, collection of service charges, awarding of service contracts and arranging repair work as necessary. The lists of tasks for the management agent can initially be ascertained by consulting a building surveyor experienced in property management to draw up a formal specification of duties. The surveyor could carry out a structural and condition survey of the building to assess future repairs, maintenance and improvement obligations in advance of appointing a management agent.

The determination of service charges is a complex task and management companies often engage the services of a property management agent and an architect initially to provide the initial estimate. The service charge represents the sum of money which the company will need to collect from all owners on a regular basis to pay for the expenditure incurred by the management company in carrying out its obligations. Such expenditure might include insurance, maintenance and repairs, the hiring of contractors to carry out works at the property, the commissioning of professionals, such as architects, auditors, and the employment of management agents. The use of a management agent will require the payment of a management fee, which is included in the service charge19. Clearly where there is no management

[19] For the purposes of this report we assume that the service charge includes the management fee to the management agent.

agent, there will be no management fee. Appendix 1 contains the typical elements that go into the calculation of a service charge.

According to guidelines set out for 'Appointing a Managing Agent' in the UK20, the relationship between the management company and the management agent tends to work best if the following are established and set down at the outset:

- The responsibilities and authorities the agent will have.
- The standards of work demanded.
- Response times and other timescales for action.
- The authorised lines of reporting and communication.

It is important to stress that the professional management agent appointed will follow instructions from the management company, his employer. Thus in order to ensure effective and good management, the management company needs to give clear and proper instructions to the agent.

2.5.3 The Role of the Individual Owners

The obligations on an owner, as regards his property, will be set out in the terms of the lease between himself and the developer. He will have a separate set of obligations between himself and the management company. The certificate of membership of the management company takes the place of a share certificate and is a record of a person's liability to be called upon for their contribution to the capital of the company i.e. payment of the service charge.

[20] Appointing a Managing Agent, a joint publication produced by ARMA, the Association of Residential Managing Agents, ARHM, the Association of Retirement Housing Managers and LEASE, the Leasehold Advisory Service in the UK.

The owners of dwellings in multi-unit developments need to be fully aware of their obligations as members of the management company. The owners collectively form the management company itself and as such are collectively responsible for the maintenance of their complex, cleaning, gardening, lighting, heating communal areas, refuse collection, security and insurance. They are equally responsible for any accidents that occur in the common areas and will share any liability which is associated with same. In such an event, there could be adverse implications for future insurance premiums, which will have to be shared amongst the members/owners.

In an article on the topic last November the author, a director of a management company, wrote:

"By persisting in treating the management company as something removed from their lives, they [the owners] permit the mismanagement of their own homes. The end result can often be an apartment complex that can't afford to pay its own bills, that falls steadily into disrepair, and inevitably decreases in value. A place people want to leave, rather than live"[21].

Where management companies work well and the members take an interest in the running of the company, the end result tends to be a strong sense of responsibility and community spreads throughout the complex, non-payment of service charges is eliminated, the market values of the apartments in the complex increase in value and people are willing to pay a premium to live in the complex.

[21] Irish Property Buyer article on Tramyard Residents Association Committee (TRAC) 11th October 2005.

3.0 International Experience

In this review of the practice which prevails in other jurisdictions we examine the legislation and regulations which exist in Germany, the UK and Australia.

3.1 Germany[22]

Germany has a long history of multi-unit dwellings and a large proportion of households live in such complexes. Below we give a brief summary of the current legislation with emphasis on the regulation of management companies, management agents and service charges.

3.1.1 Owner-occupied apartments

German property law (Wohnungseigentumsgesetz WEG) distinguishes between special property (individual apartments), partial property (rooms and areas not used for dwelling purposes (i.e. cellars and garages) and communal property (gardens, communal areas etc). It is one of the most complex pieces of German legislation.

Each apartment block, irrespective of size, is administered by the totality of the property owners within. The general assembly of these owners (Wohnungseigentuemerver-sammlung WEV = Owners' Assembly) makes

[22] There is no discernible difference between legislation and regulations governing Berlin and the rest of Germany. The only difference with regard to rented premises is that in Berlin they must be equipped with some kitchen equipment (as per telephone conversation with ***Berliner Mieterverein e.V.***. Thus, in this section we describe the situation as pertaining to the whole of Germany, including Berlin.

decisions relating to the maintenance and administration of the partial and communal property associated with the dwelling complex. Its responsibilities are stipulated by law and include the calling of at least one general meeting per year. There are detailed requirements regarding voting rights, agenda, quorum, taking of minutes etc.

According to the law, every property owner within a housing complex has one vote (even if he/she owns more than one apartment).

The WEV also has to decide on the distribution of management fees and service charges among the owners of apartments, irrespective of whether the apartment is occupied or not. The charges can be split according to the number of persons in an apartment, the floor area of the apartment or in the case of water, according to usage (water metering).

These charges are to be paid in advance according to the annual budget and excess moneys will have to be reimbursed or any shortfalls have to be made up by the owners. The WEV assembly is legally responsible for the entirety of the charges. If one or more property owners do not pay, the debt has to be distributed among the other property owners pro rata and paid by them.

The assembly may decide to appoint an administrator/management agent. His/her duties are laid down in detail in the WEG. They include the normal duties of a management company as referred to under Section 2.5.1.

In the compilation of the annual budget care has to be taken to ensure the following:

- Anticipated expenses have to be presented in as detailed a format as possible, as well as expected sources of income.

- The method of distributing costs across the parties in the complex has to be made clear.
- The total expected outlay has to be apportioned to each apartment in the complex.

The property owners' assembly may vote for an administration committee (optional). This committee consist of three property owners from the building, where one is elected chair. It has advisory, facilitating and controlling functions, but does not represent the property owners.

Its functions are:

- Support and control of house administrator/management agent
- Audit of budget and annual accounts before submission to owners' assembly for ratification.

The owners of apartments in a multi-unit development complex have to pay administrative costs (management fees) and service charges (which can be passed on to the tenants if the apartment is rented). Management fees cannot be passed on to tenants.

3.1.2 Service Charges

The costs that are allowable under the heading of service charges are regulated closely and include:

- water supply
- drainage of complex and plot
- heating the complex
- running of central water heating systems

- running of lifts for persons and goods
- street cleaning and waste collection
- cleaning areas of the building used by all inhabitants such as entrance area, corridors, stairs, cellar, attic rooms, laundries, lift
- pest control
- garden maintenance
- lighting including outside lighting and lighting of areas used by all inhabitants
- chimney sweeping
- insurance
- caretaker/janitor including his salary and other in-lieu benefits that the owner of the complex has granted him/her. Work undertaken by the janitor must not be charged to the owners of apartments
- communal antenna systems or of a broadband network within the complex
- running of the laundry (where applicable)
- Ground rents on the land the housing complex is situated on

3.1.3 Rented property

Management fees must not be passed on to the occupiers of rented property. Service charges (as listed above) can be passed on, but must be included specifically in the contract.

3.1.4 Consumer Information

Germany has very strong organisations representing property owners and tenants. Traditionally, German law was somewhat tilted towards the rights of the tenant, but in recent years this has been reversed and the balance may have shifted towards the property owners.

Property Owners

A recent comparative study in 2005 by a consumer protection association of “house-money” (colloquial term for service charges plus management fees) aimed to create more transparency and to offer comparisons. Examining 50 different costs in 11 cities across Germany, they found large discrepancies, particularly in relation to management fees. This prompted the association to publish a consumer oriented checklist for the appointment of an administrator (management agent) and a sample contract. Also available is a checklist relating to the job description of the management agent so that consumers can keep a running check on activities and complaints for the records.

They also intend to continue their research into “house money” (conducted by inviting property owners to send in their service charge and management fee bills).

They also offer a chat room on their website for property owners and a large library of information on-line, in addition to free advice to members. Members also have access to a variety of sample letters from getting insurance quotations to formal letters dealing with legal inquiries.

Tenants’ Organisations

Berlin alone has three large tenant organisations, which are fighting for lower rents and transparency with respect to service charges.

On offer are free legal aid (a third of civil law cases in Germany are related to tenancy problems!), legal advice and a large selection of information leaflets covering all aspects of life in rented accommodation.

These organisations also offer free downloadable sample contracts with advice on potential pit falls and checklists for service charges, including some very specific ones from heating costs to renovations. In every case attention is drawn to the desired outcome and consumers are advised where to get help if something is amiss.

3.2 United Kingdom

Up to the passing of the Commonhold and Leasehold Reform Act 2002, the only flats on the market for purchase were leasehold. Leasehold ownership of a flat is simply a long tenancy (the right to occupation and use of the flat for 99 to 125 years – the term of the lease). The flat can be bought and sold during that term. The ownership of the flat usually relates to everything within the four walls of the flat, but does not usually include external or structural walls.

The structure and the common parts of the property are owned by the landlord who is responsible for the maintenance and repair of the building. Leaseholders can own the freehold of their building through a residents' management company, effectively becoming their own landlords. With the advent of the Right to Manage, lessees will be able to manage the building as if they were the landlord, even though they will not own it.

3.2.1 Service Charges

There is rigorous legislation in place to protect the service charge payer. Obligations are imposed on the provider of these services.

- Charges must be reasonable and may be challenged at the Leasehold Valuation Tribunal (LVT)23;

- Service charge payers must be consulted before the landlord commences qualifying major works or enters into a long-term contract (a "qualifying long-term agreement");

- Demands for payment must be within time limits. In due course new legislation will require a summary of rights and obligations to accompany such demands;

- Service charge funds are deemed to be held in trust, in due course new legislation will require funds to be held in a designated trust account and the service charge payers will have rights to information about the account;

- The landlord must account for all annual expenditure through a summary of relevant costs, following a written request from a leaseholder or secretary of the recognised tenant's association. After the summary is provided a leaseholder or secretary of the recognised tenant's association can inspect the relevant documents. In due course new legislation will demand that a landlord must provide a statement of account for all expenditure to leaseholders without request and leaseholders will have rights to inspect the accounts

[23] The Leasehold Valuation Tribunal ("LVT") is the formal name given to the independent decision making body appointed to make decisions on various types of disputes**,** between leaseholders and freeholders, relating to residential leasehold property. The LVT generally comprises three members - a solicitor, a valuer and a non-specialist person - which are completely unconnected to the parties or any other public agency. They are a type of legal hearing, but are less formal than going to court. Application fees for the LVT vary from £300 to £500

In due course new legislation will provide service charge payers with a right to withhold payments where the landlord fails to meet his obligations regarding statements of account or designated trust accounts.

Ground Rent

Because leasehold is a tenancy, ground rent (rent for the use of the ground on which the building stands) can be charged. This must however be specified by the lease and the leaseholder need not pay until notified (in a specific form) by the landlord.

Reserve Funds

Provided for in many leases, the landlord collects funds in advance to ensure that sufficient money is available for future scheduled major works. Contributions to this fund are not repayable when the flat is sold.

3.2.2 Management Agents

A management agent may be appointed by the landlord to maintain and manage the building on behalf of the landlord. The agent's fees are usually paid by the leaseholders as part of the service charge.

In the UK, 160 management agents are members of ARMA (Association of Residential Management Agents) and as such they are governed by a Code of Practice (issued by the Association and the Royal Institution of Chartered Surveyors (RICS)) which covers contractual duties, financial duties and standard of service.

Leaseholders' Rights (pertaining to service charges and management fees)

- Information: Landlord must provide name and contact address in UK on every demand for service charges. Leaseholders can demand summaries of service charges, details of insurance cover and have the right to inspect accounts and other documents.

- Consultation on major works: major works cannot be carried out without first consulting the leaseholders. If landlord fails to do so he may not be able to recover all the costs.

- Consultation on long-term agreements: the landlord cannot enter certain agreements/contracts for any service over 12 months without first consulting the leaseholders.

- Challenging service charges: leaseholders can apply to the LVT to seek a determination of reasonableness of charges, whether already paid or not.

- Challenging administration charges: leaseholders can apply to the LVT re the reasonableness of other charges, for example for alterations or sub-lettings.

- Right to manage: leaseholders can change the management of the property irrespective of whether it is deficient or not. Leaseholders as a group can decide the management arrangements for the property (except for local authority landlords).

- Appointment of manager: if the landlord's management is deficient, leaseholders can apply to the LVT for the appointment of a new manager).

- Buying the freehold: groups of leaseholders can enforce the purchase of the freehold with the price being agreed between the parties or set by

the LVT.

3.2.3 Consumer Information

The Department of the Environment, Food and Rural Affairs (Defra) has published A Guide to the Right to Manage which covers all aspects of the scheme and a detailed checklist for consumers.

The Residential Landlords Association has published a Model Shorthold Tenancy Agreement in consultation with the Office of Fair Trading.

LEASE, the Leasehold Advisory Service, offers comprehensive information on Commonhold, including checklists and prescribed forms and model contracts etc. LEASE also provides detailed advice on choosing management agents.

3.3 Australia

3.3.1 Owners Corporation

The introduction of the Conveyancing (Strata) Act in 1961 enabled the subdivision of lots and allowed owners to obtain the title deed to a unit in a development. Lots are the dwelling units or other spaces owned by owners (including areas like laundries, car spaces, garages, marinas). The common property is everything that does not form part of a lot and is owned by the owners collectively.

A registered surveyor is needed to draw up a strata plan of any new development which then has to be approved by the Local Council. Once registered, the deeds for each unit are issued to the owners and one for the common property to the Owners Corporation.

The original owner (developer) is responsible for calling the first Owners

Corporation AGM within two months of the registration of a strata plan, irrespective of whether he/she still holds units in the development or not. The developer is required to hand over the following documents at the first annual general meeting of the owners' corporation:

- development consents
- complying development certificates and related endorsed plans
- 'as built' drawings
- compliance certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*)
- fire safety certificates
- warranties obtained or received relating to the complex and any building, plant or equipment
- occupation certificates
- sewerage line diagrams
- maintenance and service manuals
- depreciation schedules.

The maximum penalty for failing to hand over the necessary documentation has been increased from $1,100 to $11,000.

Detailed rules are laid down as to the agenda of that meeting. If the developer still holds 50 per cent or more of the units, his voting rights can be reduced to one third for special votes/resolutions.

The AGM is to elect an Executive Committee consisting of chairperson,

secretary and treasurer. The purpose of this committee is to attend to the administration of the day-to-day running of the strata scheme. Often this is in liaison with a professional strata managing agent.

The Owners Corporation must also determine the extent of management and service charges and sinking fund based on contributions known as levies. These levies are calculated according to unit entitlements. Each lot owner has a unit entitlement which determines his or her interest in the common property and on which the amount of levy is based.

If a levy is not paid a month after it is due, a 10 per cent interest charge is applied.

Should conflicts arise among owners, a mediation service is available through the Strata Schemes Office. If this is not successful, an application may be made to the Strata Schemes Adjudicator.

3.3.2 Management Agent

The Owners Corporation can appoint a strata managing agent to carry out some or all of the functions of the owners corporation.

3.3.3 Service Charges / Sinking Fund

In Strata schemes registered on or after 7 February 2005 the owners corporations are required to plan ahead for the estimated sinking fund expenditure over the following ten-year period. Charges will have to be set accordingly to meet the ten-year sinking fund estimates. In other words, owners corporations will need to work out the likely expenditure on items of a capital nature over the next ten-year period. This regulation will be gradually rolled out backwards with the aim to have all but the smallest schemes (2-units) covered by 2009.

Blocks with more than 100 units are subject to more stringent rules under the new laws, including compulsory auditing of their financial accounts every year.

3.3.4 Consumer Information

Potential buyers can gain access to information on financial and other matters relating to the unit they are interested in buying. The Owners Corporation must issue a certificate which will give information about the strata scheme including:

- The names and addresses of the Executive members and the managing agent (if there is one)
- Levies paid by the owners
- Any outstanding levies
- The address where a potential buyer can view the records and financial statements
- Any special by-laws made by the owners' corporation in the past 2 years.

If a levy is outstanding before the certificate is given and it is not shown on the certificate, the purchaser is not responsible for the payment.

Members of the Institute of Strata Title Management must sign up to a Code of Ethical Conduct. The Association offers a sample contract which lists all the services the management agent commits him/her self to perform plus the costs that will be charged under each subheading.

The NSW Office of Fair Trading offers detailed information on all aspects of strata schemes.

The Australian Consumer Handbook offers contacts for many associations related to housing, and specifically strata title unit holders.

3.4 Conclusions

Our review of the main issues related to living in multi-unit complexes in Germany, the UK and Australia has shown that these three countries have comprehensive laws and regulations in place, covering every aspect of apartment living from the management of such complexes to the setting of service charges and sinking funds and complaints procedures. In all three jurisdictions, consumer information was easily accessible (some English local authorities are issuing leaflets in a variety of languages).

None of these countries has come up with an ideal solution and given human nature, we may never be able to find one. However, a number of issues are worth considering in the Irish context[24]:

- Licensing of management agents including a code of practice, which could be included in the contract with the management company (the former practiced in the UK, the latter proposed for Australia) thereby making it more enforceable.

Licensing is a key recommendation of the Auctioneering/Estate Agency Review Group report and has been accepted by the Minister for Justice, Equality and Law Reform. The report also recommends that there should be a code of ethics and protection for service providers. We strongly support both recommendations which are discussed under Section 4.9 and are included with our recommendations in Section 6.

[24] We will expand on these issues in the recommendations in Section 6.

- In Germany, the WEV assembly is legally responsible for the entirety of the charges. If one or more property owners do not pay, the debt has to be distributed among the other property owners pro rata and paid by them.

- In all three countries there is a wide range of consumer information available from consumer agencies, bodies representing management agencies, estate agents and government departments, much of it downloaded for free.

We strongly support the belief that the consumer should have full information available to him/her when buying in a multi-unit development. We demonstrate that there is a lack of understanding by owners and tenants of the various types of entities which exist in the property management sector in Section 5 and include a number of recommendations to address this vacuum in the Irish context in Section 6 [Recommendations 5, 6 and 7].

- A Property Services Statutory Interest Account is used in Australia to provide a simple means for owners to directly fund services beneficial to them, such as a regulatory regime for managing agents, information courses for directors of management companies etc.

We consider the issue of funding for the industry under Section 6.1 and believe that the funds accumulated in a similar type account here (such as the Property Services Interest Account in Australia), based on an agreed percentage of the interest amount, could be accrued for the benefit of either the management company or the Regulator. This should be considered in consultation with the Irish Financial Services Regulatory Authority. The proposal to pass the funds to the Regulator would be in line with the general recommendation in the Auctioneering/Estate Agency Review Report that the profession should fund the Regulatory Authority [Recommendation 4].

- Management companies in Australia are required to plan ahead for ten years when calculating their service charges and their sinking fund requirements.

We believe that possibly a five-year requirement here would be sufficient to force management companies to plan for the long term. This would protect and inform the consumer [Recommendation 22].

4.0 Legal and Regulatory Issues

4.1 The Legal Background – Freehold versus Leasehold

There are two common methods of holding legal title to property in Ireland, namely by way of freehold or leasehold interest. Put simply, the freehold interest gives the owner an absolute right to his property, without impediment or restriction as to time and without his having to abide by a list of covenants or, for simplicity, a schedule of do's and don't's as regards the property.25 The leaseholder, on the other hand, holds his title for a defined period, for example 99 years and is subject to a list of obligations which he must perform. He pays a rent, (although in some cases this may be nominal); he may have to carry out works to the land; he is subject to restrictions as to what he can do with the property; he must keep the property in good repair; and he must allow the landlord inspect the property with reasonable notice.

A landowner or developer, therefore, uses the device of a lease in order to 'control' how the individual owners use the property and at the same time, the payment of a ground rent (certainly in bye-gone days) generates an income for the landowner or "landlord" as he became known. It was by way of this device that many of the towns and cities of Ireland were laid out and developed. However, we have always, in this country had a distaste for the

[25] While this represents the general position a freeholder can hold freehold estate subject to positive covenants. Unlike negative or restrictive covenants which are capable of enforcement against a successor in title, a freehold estate subject to a positive covenant is not enforceable against a successor. This will change , however, following the passage of the Land and Conveyancing Reform Bill 2006 whereby Section 47 provides a new statutory provision governing the enforceability of freehold covenants against successors by abolishing the old *Tulk-V- Moxhay Rule* enabling freehold covenants bind successors in title fully, in the sense that the benefit will run with the land intended to benefit and the burden will run with the land subject to the covenant for as long as the person remains as owner although capable of being enforced after he ceases to be such for breaches during the period of his ownership.

concept of paying a ground rent, which resulted itself in the 1970's with the enactment of reforming legislation26.

Conversely, and by its very nature an apartment owner could never own his apartment with a freehold title. This is because the extent of what he owns is defined and relates essentially to the airspace within which his apartment is situated, wrapped around by the cosmetic floor, wall and ceiling covering. What lies between his apartment and the next is the essential fabric of the building, which is "common" to both himself and the apartment owner above, below or beside him. This area and the hall, stairs and landing, as well as any other areas of the apartment block used (in common) with his co-owners or tenants also form part of the common area.

In order to control and set out mutual rights and obligations, the builder or developer of the apartment block (like the feudal landlords before them) lays out the rights and obligations of the apartment owner in the form of a lease. This will typically be for a lengthy term and, unlike the case of a householder, the owner of an apartment will almost certainly not be able to buy out the freehold interest27. A private housing development, however, where the individual householder owns the freehold of his house may also have external common areas such as the gardens, pleasure grounds and driveways. This can sometimes be the situation in relation to private developments or "gated estates" if they have a security gate system. If the owner of a house in the

---

[26] The Landlord & Tenant (Ground Rents) Act of 1967 initiated the right to acquire the fee simple interest in order to resolve the problem of leases which were expiring. This legislation was then substantially modified by the Landlord & Tenant (Ground Rents) (No.2) Act of 1978, The Landlord & Tenant (Amendment) Act 1980 and The Landlord & Tenant (Amendment) Act 1984. The 1967 legislation essentially relates to commercial premises. The 1978 Act gave householders rights to buy out the freehold interest.

[27] See Section 16 of the Landlord & Tenant (Ground Rents) (No. 2) Act 1978. See also the *obiter* decision of O'Flaherty J in Metropolitan Properties Ltd. –v- O'Brien 1995 1IR67 in which the court was considering the position of a Lessee of a shop separated from the ground by a space between it and the ground wherein the court concluded that it was never intended to include within the provisions an entitlement to acquire the fee simple, horizontal slices of air space separated from the ground like flats, apartments and similar properties.

estate has a freehold title what this usually means is that, unlike the leasehold situation, the owner as part of his title is in theory, at least, under no obligation to manage his property in accordance with rules and regulations as set out in his deed. However, common sense would suggest that a group of residents in a housing development must be subject to certain minimum rules so that notwithstanding the freehold nature of his title the owner's deed sets out certain covenants for the mutual benefit of all the residents. Examples would be an obligation only to use the house as a private residence; not to cause a nuisance; not to cause an obstruction; not to interfere with party walls or supporting structures without the agreement of the neighbour and possibly also, if appropriate the management company.

It has already been noted that a multi unit development may be one of a variety of dwelling types such as a house, an apartment, duplex, or maisonette. We have touched on the different types of title encountered and how lawyers for developers and planners of housing developments craft the legal documentation to ensure that the individual units are well managed in a way that is respectful to the other residents in the development. An apartment will always be held under a lease which will set out its own rights and obligations. A house in a development can be either but more often than not will be a freehold title.

4.2 The Parties to the Lease

To return then to the contemporary situation of the apartment owner who either occupies or lets out his apartment. Perhaps he is one of the first owners in the apartment scheme, having purchased the apartment when it was newly built. The conveyancing process can be described as follows:

The developer owns the lands. Typically it will be a limited liability company. This company would frequently be the company vehicle used by

the developer in relation to both this and any number of building projects that it might then currently be involved in. However, the actual builder of the apartment block will likely be another legal entity wholly owned or associated with the developer. The purchaser of the apartment will sign two documents – firstly, the so called “site contract” whereby he agrees to purchase (in the case of an apartment) the site or space within which the apartment will be situated and, secondly, a “building contract” whereby he, as nominal “employer” engages the builder to build the apartment for him at a defined price and subject to a declared specification of works. The building contract will typically be in a standard format approved by both The Law Society of Ireland and the Construction Industry Federation. The site contract will be in a form as published by The Law Society of Ireland. Both documents will be interrelated and will provide for the fact that the developer will convey title to the purchaser upon completion of the apartment by granting him a lease.

The parties to the lease will be firstly, the developer as land owner, secondly, the management company, and thirdly, the purchaser himself. Why the management company? This is done so as to enable it to join in its commitment to both the developer and the purchaser to undertake the various obligations of managing the building and to take over the common areas when called upon to do so by the developer.

4.3 Legal Provisions relating to Management Companies

The management company set up by the developer is an essential part of the development structure. When a company is set up or “incorporated” it can be one of a number of different types. A private company is a company having less than 50 members with limited liability as distinct from a public company which must have a minimum of seven members (subscribers). Most companies in business will be private companies with a share capital in which

shares are issued to the members. This type of situation will not be the preferred type of company as the issues of share transfer and company law compliance make it more complex than it needs to be for a management company situation.

Typically, it will be a company limited by guarantee and not having a share capital, with a minimum of seven members which would be chosen. Such a company will be "not for profit", similar to many charitable and professional bodies which use this form of company. The limitation of the members guarantee means that the liabilities of its members are limited to the amount of their guarantee to contribute to the company's assets in a winding up situation. Accordingly, if the members guarantee to contribute €10 to the company, their liability is limited to that sum. Companies limited by guarantee and which do not have a share capital are public companies and are most frequently used as management companies for residential developments in circumstances where it is necessary that all owners have an interest in the company and where there may be more than 50 such members.

The Law Reform Commission's Submission of December 2002

The Law Reform Commission (LRC) in a submission made to a company law advisory group identified the type of problems associated with typical management entities in that private companies limited by guarantee were restricted to a membership of 50[28]. Therefore, such companies would not be suitable entities in relation to a multi-unit development of more than 50 units. The LRC also looked at the possibility of the creation of another entity being an industrial and providence society (cooperative) under the relevant

[28] A proposal to the company law review group regarding management entities of multi unit developments – 16th December 2002.

legislation.[29] Such societies are a mix between a registered company and an unincorporated association but enjoy limited liability. There are strict company law requirements in relation to filing of accounts and the provisions of detailed information. It is perhaps for this reason that they are not a particularly attractive vehicle for use in a multi-unit development. The LRC proposal submitted that

"It is unrealistic to expect voluntary directors to undertake these and other duties with due diligence. The main reason for the existence of these duties is creditor protection. However, in the case of management companies, creditor protection is not such an important issue".

The LRC submission also felt that that the sanctions for failure to file returns were "draconian". This applies regardless as to the type of company entity used. The company may be struck off for a variety of reasons.[30] Such reasons may arise where the company fails, for two consecutive years, to make the required annual return. It is important to realise that the consequences of a strike off for a management company can be immense. The company has no legal existence and its property (except property held upon trust for another) thereby becomes the property of the Minister for Finance.[31] It may be that the company can be restored without too much difficulty.[32] There is far greater difficulty, however, where the application to

---

[29] Industrial & Providence Society Act 1893-1978

[30] See Section 12 of the Companies (Amendment) Act 1982, Section 46 of the Companies Amendment (No. 2) Act 1999; Section 127 of the Companies Act 1963 (as amended by Section 15) of the Companies (Amendment) Act 1982 and Section 59 and 60 (12) of the Company Law Enforcement Act 2001.

[31]See Section 28 of the State Property Act 1954.

[32] This would be the situation where an application is made to the Registrar of Companies within 12 months of the strike off under Section 311A (i) of the Companies Act 1990. If the issue is one of failure to file returns when that is done on the requisite fines paid, the Registrar will restore.

restore is made outside the twelve month period. The court may, at its discretion, restore the company if satisfied that at the time of the striking off it was carrying on business or otherwise and that it is just that the company be restored.

The problem for management companies (particularly in the situation of companies self supervised by the residents themselves) is that the residents may not be business people or be familiar with regulatory requirements, so that adherence to company law requirements might not be as prevalent as in a normal trading company situation. This difficulty may be because of an information deficit as to what functions they are expected to carry out and in particular what deadlines as regards the CRO they are expected to meet.

The concept of the running of a company may be an entirely new experience for those residents wishing to get involved. Take the example of a retired school teacher who buys an apartment along with his wife following the sale of the family home. Their children are all independent. He chooses to get involved in the running of the management company as he is a conscientious and concerned resident. Perhaps due to no other reason than nobody else was too pushed he finds himself propelled onto the committee and soon Chairman. This is not a swanky development and nobody thinks of the involvement of management agents. A good proportion of the residents are elderly and pensioners and money is tight. He muddles along collecting the service charges and paying the bills. Nobody ever tells him about the need to file accounts, hold AGM's and the like. Then one day this conscientious and well intentioned man discovers to his horror that the company has been struck off for the company's failure to do what the law and the CRO require it to do in relation to filing.

The Company Law Review Group Position Paper (July 2006)

A more recent position paper from the Company Law Review Group includes a small number of recommendations which address the position of management companies in law and the rights of owners as members of a management company. The key recommendations include the following:

- The provision of a statutory definition within the Companies Act of a “management company”.
- The provision of a menu of choices for persons incorporating property management companies as to the company type which best suits their individual circumstances. The company types proposed include a private company limited by shares, a “designated activity company” being a private company limited by shares or by guarantee that has an objects clause or a “Guarantee company” without a share capital.
- There should be no limitation on the maximum number of members a management company may have.
- The members of the management company are free to decide whether the company does or does not trade for profit.
- That an owner becomes a member of the management company automatically when he purchases an apartment and membership translates to the new owner when the property is sold on.
- There should be a less onerous strike-off provision for management companies although it plans to discuss this issue with the Registrar of Companies.

In relation to the second bullet point, the decision regarding the menu of company types should bear in mind the Charities Regulation Bill 2006 in developing the legislation, given that there are some similarities between

charitable organisations and management companies.

The CLRG see no compelling argument as to why a property management company should be subject to less onerous requirements than any other company in respect of the preparation of annual audited accounts. We fully endorse this view and agree with the CLRG that the members of the management company should have a strong interest in seeing their company's accounts audited each year to satisfy themselves that the company's affairs are conducted in a fair and honest manner. The Group goes on to recommend that a management company should follow the requirements for its chosen company type in relation to the preparation of accounts and in regard to whether it should be exempt from the need for an audit. The CLRG is of the opinion, and we would agree, that if there is a public policy desire to exempt management companies from audit, such a decision should be a matter for the Regulator and should be part of the company's Articles of Association.

4.4 Legal Responsibilities of Management Companies and Management Agents

Although the management company will have entered into an agreement with the developer as regards the transfer of the common areas, the transfer may not always happen. The standard conveyancing documentation provides that the developer will transfer the titles to the management company after completion of the development rather than when the last unit is sold. The standard documentation will provide that the sale of the last unit triggers, after a maximum of 60 days, the resignation of the subscriber members from the management company (thus passing control to the owner members).

This event marks the moment upon which the developer and the original subscriber members relinquish responsibility to the apartment owner and,

indeed, to the management company. Apart from any residual structural defects, indemnity, or other obligations that may continue to linger, a developer at this stage is out of the picture and the management company is on its own. One of our recommendations as referred to elsewhere is that a snag list would be commissioned by the developer from an independent architect or engineer and that the developer would be obliged to deal with any matters arising to the satisfaction of the management company within three months from the date of completion (not sale) of the last unit within the development [Recommendation 12].

As each apartment is sold, the new owner becomes a member of the management company. Under Article 16 Table C of the Companies Act 1963, a resolution put to a vote at a meeting of the management company is decided on by a show of hands with every member (which is likely to include the developer if he has held on to a number of units) having one vote (per unit held depending on what the lease says) and with the provision for proxy votes. In the event that it is one member one vote, the influence of the developer in controlling the management company will diminish.

The company's Memorandum and Articles of Association set out how the company is run and managed and who is entitled to vote. This, together with the lease document, will gauge whether a developer who holds on to a number of units gathers a vote per unit held. In our experience this reflects the normal situation but we believe that a strong case exists for restricting the voting rights to one vote per household33, irrespective of tenure. [Recommendation 14]. Therefore, someone owning 3 apartments in the scheme, but not living there, should be required to offer the right to participate in the management company to his/her tenants. Where the developer has a

[33] Here we mean one vote per household where the household may contain one or more occupants.

number of units unsold and gathers up a voting entitlement commensurate with the number of units involved there is an equally compelling argument that he should not be permitted to utilise the voting clout deriving from the unsold units.

This is probably the most contentious issue and we are aware that there is general agreement in favour of one owner one vote, which is the current position. Thus in a situation where an apartment block had 60% owner occupied units and 40% investor units, the investor/s would have a combined 40% of the vote. Thus 40% of the residents in the complex have absolutely no say in what is going on around them, will be unable to get involved in the running of the management company and will have no sense of belonging in the community where they reside. Thus we are of the view that the right to participate in the management company should be reserved for a) owner occupiers and b) tenants (unless the latter have no wish to participate). In relation to tenants we would propose that the tenant's authority to vote should only apply in regard to normal expenditure on a day-to-day basis. It should not extend to matters of a capital nature which would have implications for payment to the sinking fund. We believe that consideration should be given to this proposal for the following reasons.

From a consumer perspective, the main objective should be to create a sense of responsibility for the space that they occupy and a sense of community, so that all residents in the complex have a say in what is going on around them, irrespective of their tenure. To borrow the title of the Dublin City Council report34, we believe that a critical ingredient for "successful apartment living" which can deliver "sustainable communities" is the

[34] Successful Apartment Living – A Role for Local Authorities in Private Residential Management Companies, Evelyn Hanlon, Private Housing Unit, Dublin City Council, July 2006.

requirement that all residents participate in the management company for their complex and take an interest in its activities, as they ultimately are the consumers of the benefits of a well run management company. The end result should be that the attendance at meetings of the management company should be higher, the market value for the properties should increase in value, the apartment block becomes an attractive place to live in and investors have no difficult in letting their properties. Thus where we differ from the general consensus is not in relation to owner occupiers, but in relation to tenants who are after all contributing in part or in full towards the cost of the dwelling for the investor. The investor will generally invest in the property because he/she perceives it as a good investment, in return for which he/she hopes to earn a return due to capital appreciation over time.

In time as the scheme settles down and units begin to be sold the influence of the developer should be on the wane. This may not always be appreciated by the individual owners, who fail to realise that they have the power to assert control and influence within the management company in that they are the management company and that they can themselves make things happen.

This is particularly so as regards a consideration to appoint a management agent to run the management function. Invariably, he or his company will have come with the package. The developer may have sought a beauty parade or tendering process. The individual purchasers or would be purchasers will, of course, have played no role in their selection. What is frequently not appreciated, however, is the fact that the management company has power to reverse any such appointment on the part of the developer, particularly if the management company becomes dissatisfied with the services being rendered by the management agents. It is suggested, therefore, that the owners, having established a number of committed persons willing to get involved in a situation where they have “inherited” the

appointment of a management agent, should keep such appointment under review, look to see whether the appointment is in writing and if so what is the term, can it be revoked and if so what notice is required to be given. They should keep an open mind in relation to the renewal of any such appointment and certainly contemplate having a tendering or beauty parade process for any subsequent appointment. Ideally, the initial management agent's appointment should be subject to a re-appointment process at each AGM with the management company reserving the right to seek alternative expressions of interest from other service providers35.

The usual responsibilities of a management agent have already been set out in Section 2.5. Ideally the management contract should be in place as between it and the management company setting out expressly not only what the management agent will do, but, in particular, and for clarity what it won't do.

4.5 Service Charge - What is it and how is it calculated?

"Service Charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is

a. payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and

b. the whole or part of which varies or may vary according to the relevant costs, the latter being those costs or estimated costs incurred by the management company/management agent in

[35] We include in the appendices sample covering letters inviting tenders for management agents (Appendix 2), a checklist of possible services required from management agents (Appendix 4), and questions to ask prospective management agents (Appendix 6).

connection with the matters for which the service charge is payable[36].

As will have been seen from the comparison from other jurisdictions we are legislatively passive in relation to the affairs of the management company, save in the matter of company law enforcement and in respect of which an argument can be made that the legal enforcement provisions may be too harsh. In other words we have little or nothing in the way of express legislative provisions dealing with the sector and the complex relationship between the various participants.

In other jurisdictions it is a statutory requirement that the service charge costs be reasonably incurred and to a reasonable standard. In the UK, a service charge demand cannot be made eighteen months after the charge has been incurred. UK law furthermore recognises the distinction as between improvements made and repairs. An apartment owner in the UK is obliged to contribute towards the cost of repairs under a service charge provision but not towards the costs of improvements. Consequently, in the UK there may be an argument that certain expenditure comprises improvements rather than repairs and justifies the apartment owner in disputing an item on the service charge bill. However, there is not always a clear cut distinction but rather one, in any event, that is misunderstood by both management company and owner alike.

How is the Service Charge arrived at? Where does it get its contractual basis?

The answer is found in the lease document. Contemporary modern leases are becoming more elaborate and complex. Originally, we would have come

[36] This is a paraphrase of Section 18 of the relevant English legislation, namely Section 18 of The Landlord & Tenant Act 1985.

from a situation where the expenditure is collated and the total is then split per unit. Thus in a block of 19 apartments where the expenditure is €19,000 in a year, each owner pays €1,000. While this type of arrangement still continues, one is encountering more and more of a labyrinth of variable service charge provisions dependent upon dwelling type. More and more apartment owners are paying a service charge which is related to the proportionate size which their apartment bears to the overall development i.e. floor area. This is an approach we would concur with [Recommendation 20]. Sometimes, too, in a mixed use development, there will exist varying types of service charges applicable to a particular block of apartments in a development, an external service charge for the gardens and car parking areas; a car park service charge (unless it is grouped together with the overall service charge but this is becoming less likely as not everyone chooses to avail of a car space), a retail user service charge where retail outlets are part of a complex, and perhaps other variants.

The lease document itself determines the quality of information provided to the apartment owner.37 The lease will spell out the responsibilities of the developer until he makes the transfer of common areas. As regards the owner it will say what he must do in relation to maintaining his unit, such as for example keeping it in repair, not creating a nuisance and paying the service charge. It will obligate the owner to obey any rules and regulations as may be set down by the management company from time to time and it will give power to the management company to manage the complex, pay for whatever services are required and calculate and collect the service charge.

---

[37] A private members bill was published and introduced by Deputy Fergus O'Dowd on the 4th April 2006 and proposing the establishment of a Code which would *inter alia* regulate the provision of all necessary information to owners/tenants regarding the workings of management companies and management agents and their rights and responsibilities in all areas relating to the proper up keep of communal areas in multi unit developments.

The management company, through its management agent (if there has been such an appointment) will be the arbiter as to what is and what isn't spent, how it is spent, when it is spent and what services are chosen and how much is paid for those services. The apartment owner (in the absence of a resolution passed at an EGM or AGM of the company) will have no say whatsoever in that process and neither will there be any brakes put on the management company/agent.

In the UK, as we have seen, significant legislative intervention imposes strict statutory obligations on the developer/management company as to the quality of information to be provided to the apartment owner and also as to the manner in which he or it goes about spending the money.38 In Ireland, however, the manner and the basis of the service charge is enshrined in the lease document and invariably the service charge is as determined by the management company itself or its accountant who prepares the demand and this sum is regarded as being "conclusive".

4.6 The 'Sinking Fund' Concept

The matter of "Sinking Funds" or so called "Reserve" funds can also be problematical. The problems of cash flow for a management company obliged to carry out works under the terms of a lease can be helped by the prudence of having in place a 'rainy day' fund. In the same vein, the fluctuation in service charge demands from year to year, more especially the imposition upon the owner of larger demands at infrequent, irregular and sometimes unforeseeable times to cover items of extraordinary capital nature (such as lifts, boilers, air conditioning units, roofs, etc.) can be a cause of considerable friction between owners and the management company/agent, and a frequent

[38] See the UK's Landlord and Tenant Act 1985 Section 20-23.

source of litigation. The way around this was for the owners to adopt a practice of spreading re-occurring but irregular expenditure more evenly over the accounting period and this is done by way of a “sinking” or “reserve” fund.

There is, however, no requirement on the part of the developer/management company to set up and establish a sinking fund arrangement.39 Its basis will be found in the lease document itself but many multi-unit schemes have no sinking fund provision and, even where they do, this can be hopelessly inadequate. The unfairness of a system which allows an owner to sell his/her apartment, perhaps anticipating major expenditure down the track, as contrasted to an incoming owner, perhaps oblivious to that which is going to befall him, is worthy of careful consideration.

For these reasons it is vital that a solicitor acting for an intending purchaser of a unit in a multi- unit development makes a preliminary enquiry before he allows his client commit to purchasing as to whether:

- the person selling or the management company are aware of any possible claims against the management company’s funds;
- the vendor is aware of any proposal by the management company to carry out any repair work or incur any other expenditure which would substantially affect the service charge payable; and

[39] See Dail speech of Deputy Fergus O’Dowd on the introduction of the Residential Tenancies (Amendment) Bill when he said “Adequate provision for a sinking fund should be made from day 1. It is emerging that many agents set the annual fee without any provision for large scale refurbishments that must be calculated every few years. This leaves residents with a shortfall and a choice of paying substantial euro all at once or else living with a decaying physical environment – neither scenario is tolerable. “

- the management company have in place a sinking fund and its present level and in whose name it is held.[40]

It would seem of utmost importance that a sinking fund provision exists in all cases of multi-unit developments which comprise an internal common area environment. The Fingal County Manager in a report to Fingal County Council in April 2006 recommends that the means of calculation of the amount of the fund ought to be set out in legislation and that the calculation in every instance be freely available to all residences. Both this concept together with the provision of information for the consumer, so that he understands what the service charge is and how it is assessed, why he pays it, what it covers, the existence of a sinking fund, and the importance that it be prudently and adequately maintained – are all strong recommendations of this report [Recommendation 24].

4.7 Residential Tenants and Service Charges

The PRTB[41] is now the regulatory authority in relation to all lettings of residential property.[42] The jurisdiction of the Board to adjudicate on matters referred to it are set out in Section 78 of the RTA 2004. It would appear that a landlord may refer a tenant's failure to pay service charges to the Board. Whether the tenant is obliged to do so will depend purely and simply upon the provisions of the tenancy agreement and in general a landlord will absorb the service charge into the rent paid.[43]

---

[40] See Objections and Requisitions on Title – as published by The Law Society of Ireland 2001 Edition

[41] PRTB – established pursuant to the Residential Tenancies Act 2004 – Section 150

[42] Section 3 (1) of the Residential Tenancies Act 2004. See Section 3(2) of the RTA in relation to what is not covered.

[43] See Section 78 (1)(Q) of the RTA 2004

The landlord is obliged to forward to the management company any complaint received by him in writing by the tenant. Furthermore the landlord must forward to the tenant any statement in writing as to the steps, if any, the management company may have taken to deal with the matter or matters to which the complaint relates, and to forward to the tenant any response received back from the management company who are required to "have regard" to the complaint.[44] Furthermore, the management company is obliged, at the tenant's request, to furnish to the tenant particulars in writing of the service charges made by the company in respect of the dwelling in a specified period and how the charges have been calculated.[45]

The Act defines "service charges"[46] as being charges made by the company in respect of the performance of functions by it in relation to the apartment complex concerned. From a review of the determination of case referrals to the PRTB since the enactment of the legislation, it would appear that the vast majority of cases referred by tenants relate to deposit retention (43%) and breach of landlords' obligations (12%), while rent arrears is the most common compliant by a landlord (71%). There have also been quite a number of third party complaints (5%).[47]

---

[44] See Section 187 of the RTA 2004

[45] See Section 188 of the RTA 2004

[46] See Section 188(4) RTA 2004

[47] Source – a review of Determination Orders made by the PRTB as of 25th January 2006 comprising a total of 987 cases. See Law Society of Ireland CPD Seminar *Dispute Resolution and the Residential Tenancy Act 2004*, held 28th February 2006 and a paper delivered by PRTB Member, Marjorie Murphy Solicitor

4.8 Management Companies, Local Authorities and 'Taking in Charge'

In recent months, the issue of housing estates where common areas are maintained by management companies instead of the local authority has created much public debate. In order to understand the complexities involved, we will look at the "traditional" housing estate and the recent manifestation of estates with management companies.

4.8.1 "Traditional" Housing Estates

The "taking in charge" process takes place once the local authority is satisfied that the developer has completed the estate to the standard outlined in the planning permission. There are statutory provisions under Section 180 of the Planning and Development Act 2000 empowering residents to compel a local authority to take in charge in cases where this has not happened.

On 26 January 2006 the Department of the Environment, Heritage and Local Government, issued Circular Letter PD 1/06 reminding planning authorities of their responsibilities in relation to the taking in charge of estates and asking that each authority adopt a policy in this regard. This circular also requested a report from each authority on the issues of estates to be taken in charge. The vast majority of returns have now been received and these indicate that virtually all planning authorities either have a policy in place for talking estates in charge or are in the course of developing one. The returns also indicate that about 550 estates will be taken in charge in 2006, affecting almost 26,000 houses. It also emerged that approximately 2000 estates

nationwide, for which planning permission had expired more than two years ago, had not yet been taken in charge.[48]

Since these estates[49] of do not involve management companies, the issues – albeit serious for the residents concerned – fall outside the remit of this study.

4.8.1 Housing Estate and Management Companies

A recent practice in some local authorities has emerged where permission for housing developments have been granted subject to a condition that the developer puts in place a management company structure. For example, in Kildare County Council out of 53 residential estates under construction as of December 2005, 38 permissions required the creation of a management company structure. The management company is in charge of maintaining common areas such as green spaces, waste collection and insurance. Thus the house owner has to face the costs of running a management company together with the inevitable service charges.

This change in policy has been seen by many as an attempt by local authorities to avoid the costs related to the taking in charge of an unprecedented number of new developments. However, in the Parliamentary Debate cited above, the Minister for the Environment, Heritage and Local Government stated that in late 2005 a survey was carried out of planning authorities regarding their policy on attaching planning conditions relating to management companies in housing developments. We quote:

---

[48] Parliamentary Debate, 17 May 2006

The responses to that survey indicate that the majority of planning authorities do not attach conditions to planning permissions requiring management companies to be set up in the case of housing estates. A number do in very specific circumstances, for example, where there is a shared waste water treatment plant between a number of houses. Given the existence of such circumstances, it would not be appropriate to place an absolute ban on attaching planning conditions requiring management companies in housing estates

However, the presence of a management company should not preclude the taking in charge of roads and related infrastructure. On that same day, Minister Roche also stated:

> "On 26 January 2006 my Department issued Circular Letter PD 1/06 reminding planning authorities of their responsibilities in relation to the taking in charge of estates and asking that each authority adopt a policy in this regard. This circular clearly stated that the existence of a management company to maintain elements of common buildings, carry out landscaping, etc. must not impact upon the decision by the authority to take in charge roads and related infrastructure where a request to do so is made. I am considering whether any additional advice is required in relation to this matter."

Consumer Issues

The existence of a management company has to be included in the documentation an intending purchaser has to sign. However, this information

---

[49] Here we are referring to the concept of the 'traditional' type private housing estate built since the 1960s but we are also referring to new private estates built today which are eventually taken in charge by local authorities.

is often not clearly relayed with the result that many house owners in such estates resent the fact that they have to pay for services that residents in “traditional” estates taken in charge by the local authority do not have to bear.

Since many of the estates which involve management companies are relatively new, the developer would still dominate the company, often leaving the residents powerless to influence decisions in relation to the appointment of a management agent and the level of service charges. The Fingal county manager, in a report50 commenting on the issue of management companies, suggests that legislative intervention in relation to the following areas would be welcome. It recommends;

- Prohibition on the withholding of handover of the control by developer for prolonged periods;
- Introduction of a formula to calculate reasonable contributions to prevent the imposition of too low or too high service charges at the outset;
- Making sure that sinking funds have to be established to look towards the long term maintenance of the property; and
- Providing help for volunteers who end up running the management companies on behalf of their neighbours by requiring members to keep payments up to date, by allowing for the imposition of penalties when people do not keep up payment.

The Fingal Report concludes as follows;

"There is a clear and urgent need to introduce primary legislation to protect the right and clarify responsibilities of individual property owners who undertake to participate in a management company for residential property as a shareholder/member. This legislation should remove the opportunities and penalise developers who use this vehicle in their own interest, with no regard for the other shareholders in the company. National Government can be actively pursued in furtherance of this aim".

4.9 Models of Regulation Elsewhere

Currently in the UK the Association of Residential Managing Agents (ARMA) acts as the self-regulatory body for those professional managing agents that are able to meet the Association's strict entry criteria and the ongoing membership requirements and standards.

At ARMA's 10th annual conference held in November 2005, its chairman Duncan Rendall stated

"I find it impossible to think of another sector where the management of people's homes and literally hundreds of millions of pounds of their money is controlled by unregulated parties." He went on to say that "to date the government's focus from a regulatory perspective has been to legislate 'outcomes' and to provide means for lessees to challenge wrongdoing after the fact. However, in my view the government's energy would be far more effectively deployed by regulating the participants in the first place. By providing a regulator who could prevent an operator from acting as a managing agent, there would be a real sanction against those market

[50] Report by County manager to the Joint Meeting of the Strategic Policy Committees for Housing and Planning and Economic Development 19th April 2006

participants who failed to act properly and agents who entered the market place on a low-price opportunistic basis would think twice before proceeding."

Thus the issue of regulation has yet to be tackled in the UK. There is a need to look to other jurisdictions to examine best practice from a regulatory perspective. It is noteworthy that all Australian and New Zealand legislation and requirements for regulation of property management arise from consumer protection concerns and are not viewed as primarily real estate or landlord management issues.

The main elements considered under the area of regulation of the property management sector in Australia and New Zealand51 are the following:

- Licensing
- Professional indemnity
- Disclosure
- Code of Practice
- Statutory Interest Accounts
- Financial services legislation

A number of the above points are worthy of explanation in the context of addressing regulation of the sector in an Irish context. There are a number of areas that could and should be replicated here in the interest of best practice.

Licensing

[51] For further information see http://www.lease-advice.org/impmain.htm

New South Wales remains the only Australian state where strata managers are required to be licensed (both individual agents and companies); the administration is self financing through the initial application and yearly renewal fees and provides a means whereby incompetent or dishonest agents can be prevented from trading through cancellation of the licence.

This is an imperative in the Irish context. The Auctioneering/Estate Agency Report recommends a licensing system for all individuals and trading entities in the property management sector. In regard to fees the Group recommended that the current flat fee (irrespective of size of enterprise) should be replaced by a three-tier fee structure with fees for each band related to size and turnover. The fees collected are to enable the Regulatory Authority to carry out its key roles of licensing, regulation and information. We support these recommendations.

Professional Indemnity

In Australia we understand there is a statutory requirement for strata managers to hold professional indemnity (PI) insurance (Sub-division Act 1988).

This is an issue which does not need to wait for a licensing system. If property management is to be seen as a professional business, persons applying for a licence and intent on performing certain prescribed functions should be required to maintain and show evidence of professional indemnity insurance to prescribed levels. This is also a recommendation of the Auctioneering/Estate Agency Report which suggests that the level and nature of professional indemnity should be determined by the Regulatory Authority in consultation with relevant bodies.

Disclosure

Both in New South Wales (NSW) and New Zealand (NZ) there are requirements for disclosure by the manager of all commissions, discounts etc; the NZ requirements also include details of any legal or financial relationships between the manager and the freeholder or any other relevant party. Such requirements would do much to encourage trust between managers and owners and would resolve ongoing problems of fees and commission in service charge disputes.

Code of Practice

In Queensland the Code of Practice is included within the managing agent's contract of appointment. New Zealand takes a more radical approach in deeming the Code to be enforceable as a contract by any unit owner.

It is recommended by the Auctioneering/Estate Agency Review Group that the regulatory authority should promote the operation of Codes of Ethics and Practice to be adopted by all licence holders. The adoption of such a Code would, the Group maintained, deliver "higher levels of service quality throughout the profession". Such a code would be voluntary rather than mandatory and would allow the different professional bodies to differentiate themselves through quality of service offered by their members. We support this recommendation [Recommendation 17].

Statutory Interest Accounts

The NSW Government takes a proportion of the interest paid on all strata trust accounts; this effectively funds the Residential Tribunal Service and other activities relating to dispute resolution. A similar proposal here could provide funding to fund a licensing and regulation system for management agents and training of management companies.

As previously noted (Section 3.4) we believe that the funds accumulated in a similar type account here, based on an agreed percentage of the interest amount, should be accrued for the benefit of the management company. We believe that this issue should be considered in consultation with the Financial Services Regulatory Authority [Recommendation 4]. This proposal would be in line with the general recommendation in the Auctioneering/Estate Agency Review Report that the profession should fund the Regulatory Authority, although no specific proposals were made in this regard.

Financial Services Legislation

In view of the very substantial sums held and handled by management agents, and the financial advice they provide in terms of insurance and long-term building maintenance, there is a case for their inclusion within Financial Services Act requirements. This is an area which could be examined in consultation with the Financial Services Regulator.

4.10 Regulation Proposals in the Irish Context

The property management sector is currently unregulated in Ireland. This review of the operation of the market and its key players has highlighted a number of deficiencies in how the sector currently operates. As a result there are a number of issues in the sector which need attention to ensure that property management is seen as a professional business sector where best practice is followed. In some respects the current unregulated status of the sector is primarily the consequence of a lack of legislation to deal with the range of problems that can arise in the sector. While the work of the Law Reform Commission will address many of the legal concerns there is also a need to ensure that the sector is properly and efficiently regulated. In his speech to the Institute of Professional Auctioneers and Valuers (IAVI) Annual Convention the Minister for Justice, Equality and Law Reform stated that

"the Government is of the view that there is a sufficient level of consumer dissatisfaction particularly in respect of certain property selling practices and the absence of redress for clients when things go wrong to suggest that the case for a better regulated approach is self-evident".

As previously referred to, the Estate Agency Review Report commissioned in July 2004 by the Minister reported in July 2005 and concluded with a comprehensive set of recommendations for the auctioneering/estate agency sector. Arising from that report the Government is to set up a statutory National Property Services Regulatory Authority52 (NPSRA) that will take responsibility for the licensing and regulation of all trading entities providing auctioneering, estate agency, property letting and/or property management services.

While that report highlighted the current unregulated status of property management agencies, although this area was outside the scope of the review, the Group recommended that the Regulatory Authority should licence and regulate property management agents undertaking multi-unit management functions. Individuals and trading entities wishing to engage in the business of property management in the State will be required to have a Class D licence53 which will be based on a set of competence criteria.

The following comprised the main recommendations of the Review Group, a number of which have already been referred to throughout this report:

---

[52] The new body will be known as the National Property Services Regulatory Authority and will be based in Navan, Co Meath, in line with the Government's policy of decentralisation. A Director has recently been appointed.

[53] The Review Group identified four different classes of license which would be subject to different competence criteria. An estate agency (Class A) for example would be required to demonstrate competence in all areas.

- the establishment as a matter of urgency of a Regulatory Authority to underpin new regulatory arrangements in the auctioneering sector aimed at achieving uniformity and transparency in licensing, regulation and information provision;
- tighter provisions with regard to the competence of providers of auctioneering/estate agency, property letting and property management services
- new monitoring and inspection procedures to support the licensing system
- the promotion of a code of ethics and protection for service providers
- the implementation of a complaints and redress system
- the provision of greater protection for clients' money.

4.11 A Regulatory Framework for the Property Management Sector

While the brief for the Review Group covered the estate agency sector predominantly, the above recommendations will also extend to cover property management services. Specifically it is envisaged that the main reforms for the property management sector should be as follows[54]:

(a) All residential property management firms and or any person providing property management services will have to hold a licence to act as a property management agency.

[54] We arrived at this list of reforms in consultation with a major player in the property management sector

(b) In order to get a licence, the firm or individual will have to demonstrate certain competencies.

(c) It will be a criminal offence to practice in property management or as a letting agent without a licence.

(d) The Regulatory Authority will be responsible for awarding licences and will have the powers to act against unlicensed operator.

(e) The Regulatory authority will keep a register of licensed holders by trade name which will be accessible to the public.

(f) All applicants for a licence will be required to have relevant educational qualifications, professional indemnity insurance, an external accountant certificate that client funds and systems are appropriate and have the necessary resources to run a practice. Furthermore the practice will be required to demonstrate that their principals and staff keep abreast of changing legislation and best practice to serve their clients well and in a professional manner.

(g) The Regulatory Authority will have powers to carry out investigations on foot of a complaint including the right of entry and access to all files, the right to impose sanctions and to withdraw licence.

(h) A key element of the task of regulation is to deal with consumer complaints. There is currently no mechanism to deal with consumer complaints. The Review Group noted that there is no ongoing official supervisory, disciplinary or consumer redress system. This will be addressed by the new body.

(i) Arrangements for the better protection of clients' monies.

The Department of Justice, Equality and Law Reform is to fund the initial

start up costs for the new Authority but thereafter the proceeds or part of the proceeds of the new licensing system will fund the ongoing costs and activities of the Authority. This is the practice in other jurisdictions.

In order that the new Authority can become operational as soon as the legislation is enacted, the Minister for Justice, Equality and Law Reform has established an Implementation Group to oversee the practical arrangements for its establishment. A Director has recently been appointed. Accommodation and staffing needs and financing arrangements are being identified and progressed.

We understand that the draft heads of the bill to establish the new Regulatory Authority body are currently being drafted in the Department of Justice, Equality and Law Reform. Thus legislation to accompany the establishment of the new body will not be ready until late 2007.

The establishment of the National Property Services Regulatory Authority (NPSRA) is a very positive development which will be also responsible for drawing up the rules and regulations which will deliver best practice, professional service and a competitive property management market. The other recommendations from the Review Group report will be important elements of the regulatory framework for property management agents.

Arising from the above discussion we propose four additional recommendations in the area of regulation:

Recommendation 1

It is recommended that the National Property Services Regulatory Authority Bill should be prioritised in the Government's programme to ensure that it is enacted as a matter of urgency. This will ensure early protection for the consumer.

Recommendation 2

Where possible the recommendations that exist for the auctioneering/estate agency sector should be replicated in the property management sector.

Recommendation 3

We recommend that the NPSRA should consult with the Irish Financial Services Regulatory Authority (IFSRA) to establish best practice in regard to the financial arrangements of property management companies. Arrangements for the better protection of clients' monies should also be considered by the IFSRA, including new legislation for the holding of client accounts, as recommended by the Auctioneering/Estate Agency Review Group Report.

Recommendation 4

It is recommended that a similar proposal to the Statutory Interest Accounts in Australia might be considered by the National Property Services Regulatory Authority in consultation with the Financial Services Regulator. The funds accumulated, based on an agreed percentage of the interest amount, could be returned to the management companies or used by the Regulator to fund the regulation of management companies.

Given that it is likely to be early 2008 before legislation establishing the NPSRA is in place, it is recommended that in the interim a new Irish Association of Residential Management Agents should be set up. This could be an independent body in its own right or could exist under the auspices of the Irish Property and Facilities Management Association (IPFMA). The association would be the Irish Association of Residential Management Agents (IARMA) and should mirror itself on the corresponding association in the UK

called the Association of Residential Management Agents (ARMA)[55] [Recommendation 17].

The IARMA could work closely with the National Property Services Regulatory Authority to ensure the highest standard of property management are maintained by its members and members could undertake to comply with a Code of Practice for management agents relating to service charges, which would be drawn up in association with the National Property Services Regulatory Authority and the Society of Chartered Surveyors[56] [Recommendation 18]. It should relate to residents' rights and management practice and impose minimum obligations on managers. It should specifically deal with the following:

(a) Contractual duties as between the management agent and his/her clients;

(b) Financial duties such as keeping separate client accounts, maintaining detailed income and expenditure accounts for each client, and having appropriate professional indemnity insurance cover; and

(c) The standards of service which IARMA members agree to offer their clients in regard to, for example, dealing expeditiously with enquiries, keeping abreast of legislative changes and being aware of the terms of the lease for the particular complex in question; communicating regularly with clients; and settling disputes by mediating and negotiating with all relevant parties.

---

[55] http://www.arma.org.uk

[56] In the case of ARMA all of its members endorse, accept and undertake to comply with a Code of Practice relating to service charges published by the Royal Institution of Chartered Surveyors. The general terms of this code falls under the three headings provided above.

There needs to be some quality check for management agents which ensures that they act professionally at all times. The task of ensuring the IARMA members comply with the Code of Practice should fall under the remit of the National Property Services Regulator.

It is also recommended that the new association, IARMA, should develop, in conjunction with the National Property Services Regulatory Authority, a range of nationally recognised professional qualifications and training courses for those involved in property management [Recommendation 19].

4.12 Other Issues

In this whole debate it is important to acknowledge the role of planners. It is recommended that planners should ensure that they monitor planning permissions and that the developer honours his obligations under the terms of his planning permission. In doing so account should be taken of the developer's track record when considering further applications for permission [Recommendation 25].

Section 35 of the Planning and Development Act 2000 provides that the planning authority can refuse planning permission on the basis of past failures to comply. We have no information on the extent to which planning authorities invoke this provision but it provides a mechanism for ensuring that developers complete their developments in line with the conditions of their permission. The section states that if the planning authority forms the opinion that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such

permission if granted, then planning permission should not be granted57. The extent to which local authorities invoke this provision should be examined. It may be necessary to apply this provision more strictly in order to ensure that the developers' satisfy their obligations in their leases and that their developments are completed to the appropriate standard before new developments commence.

[57] Section 35 (1) (b) (i) and (ii) Planning and Development Act 2000.

5.0 Consumer Issues and Consumer Checklist

While not specifically requested in the brief for this study, DKM decided to conduct a small scale survey of residents in multi-unit dwellings and housing estates to get some direct feed-back on what the major issues for consumers were. Due to the short time-frame of this study, this survey cannot claim to be representative in a statistical sense.58 However, even this minor exercise threw up interesting insights. Thus at the outset, we strongly recommend that the NCA conduct two surveys in order to ascertain views and build up a data bank on various aspects to do with living in multi-unit developments:

Firstly, it is recommended that the NCA conduct a major representative consumer survey in the near future to ascertain consumer views on a whole range of issues to do with living in a multi-unit development [Recommendation 8]; and

Secondly, the NCA should undertake a national survey of service charges and associated issues in order to generate a database on the composition and levels of service charges and management fees for consumers in different types of multi-unit developments [Recommendation 9].

[58] We received 20 completed questionnaires (see Survey in Appendix 7)

Within the context of the current report, we are just able to give a flavour of the sentiment amongst consumers. We will present the results under the following headings:

- Lack of information about living in apartments
- Management companies
- Management agents
- Service charges / Sinking fund
- Respondents' recommendations for intending buyers

In each of these sub-sections we will summarise the responses and include direct quotes where appropriate.

5.1 Lack of Information about Living in Apartments

Apartment living on a large scale is new to Ireland. Communal living in close proximity will always create problems. The maintenance of a multi-unit dwelling is not something that is foremost on people's mind when they contemplate buying into the modern dream of living in an apartment in the city. The care-free nature of such living is often emphasised in advertisements – no more painting of houses, cutting of grass etc. Paying for the upkeep of common areas inside and outside of a building requires a sense of community and a willingness to delegate the responsibility to others. If the benefits of the payment of service charges and management fees are not immediately obvious and the mechanism of getting clarification is obscure, resentment will arise.

The management structure involved in the maintenance of a development is not clearly understood by many apartment dwellers. Owners do not appear to know that upon purchase of their unit they are automatically members of the management company.

Management companies and management agents are confused:

> "Before buying I would've have liked to know about the problems we were having with our management company. Potential buyers should be aware of problems with management companies. Particularly first time buyers like myself."

Some purchasers do not realise that service charges are needed to maintain the building they are living in and that there would also be costs associated with maintaining a house if it were to keep its value.

> "I might have been better off buying a house as the fees for apartments are high and its money for nothing. Also that the management agent is here to stay and that fees go up every year."

5.2 Management Companies

5.2.1 Housing estate being run by a management company instead of being taken over by the County Council

As discussed above, in recent years some local authorities have made it a condition for granting planning permission that the finished estate (often with a mix of housing types from detached

houses to apartment blocks and commercial units) should be managed by a management company. This causes much resentment among residents who feel discriminated against just because they are newcomers to an area.

> “The county council should maintain the larger green areas. They do in other estates down the road from my estate. Why should I be discriminated against because of my address?”

There is a lack of information with people claiming not to have been made sufficiently aware of what they bought into when they signed for their houses.

> “Find out about the management company, if it exists and what they will do for you otherwise it may be cheaper in the long run to buy in an established estate where the council do the job of the management company.”

In theory, purchasers should automatically become members of the management company. However, most estates where the local authority has endorsed management companies are still relatively new and thus the management companies are still in the hand of the developers, leaving residents powerless. This has led to widespread refusal to pay the annual charges imposed by the management company, this lack of funds in turn contributes to the absence of services in many areas.

> “I am charged €250 per annum for the very basic services like cutting the grass, street lighting etc that should be provided by the council. The services are rarely carried out, I have sent emails demanding action and the only thing the

management company are good at is sending out threatening letters to take me to court because I refuse to pay for a non-existent service."

This illustrates the lack of information on the role local authorities and management companies. Our discussion under Section 4.8 is relevant here.

5.2.2 Management company dominated by developer

If the developer keeps units in the housing complex, the memorandum of the management company can be designed to allocate a disproportionate voting block to the developer.

> "Unfair allocation of votes i.e. one vote per apartment owner, 10,000 votes for developer and his nominees. So impossible to force change with an EGM."

In addition to the control of the management company, the title to the lands surrounding apartment blocks is often also still in the hands of the developer.

> "Reversionary title not being handed over to management company because the developer holds out hope of further planning permission to grab green space from complex for further units"

If the landscaping has been neglected, the market value of the property is affected negatively. Some residents' management companies are forced to take legal action to have the title of the

green space transferred to them after 14 years.

5.2.3 Difficulties associated with running a management company

When the developer has handed over ownership of the common areas to the owners of the units in a multi-unit dwelling, they have to take charge of the management company, governed by Company Law. The directors of this company are responsible for the upkeep of the property, for hiring and supervising a management agent and for keeping the residents informed.

This is a very onerous voluntary task and has to be carried out in the margins of people's lives. Respondents who are or were members of a management company have given us interesting feedback:

> "People demand, but are slow to assist or go on the board of directors."

> "It has proven a time consuming, often frustrating and always thankless task to ensure that the management company is run well. We suffer from lack of infra-structure that might help make things easier, such as space set aside for a boardroom or for meeting suppliers. We have developed a good system which works well, but do not know of a mechanism for sharing our experiences and our expertise to help others avoid re-inventing the wheel. Nor is there a forum where we can learn from the experience of others and develop best practice. Above all, we would be more comfortable if there were a "good Samaritan" equivalent

law to protect the voluntary board of directors from legal action if a mistake is made in good faith."

Respondents also lamented the lack of continuity, as directors quickly get burned out by the thankless task of keeping their complex in good shape for their fellow residents. Apathy on behalf of owners is a problem, particularly in complexes with a large proportion of rented accommodation. Absentee landlords often are not interested in day-to-day issues.

> *"General ignorance about manner in which decisions have to be made, problem of continuity, 75% rented, these owners do not care, 30% turn-out to AGM, polemical nature of meetings, thankless job"*

Lack of training of board members with regard to their duties and responsibilities, how to conduct a successful meeting etc make it very difficult for non-professional people to function as a board of directors.

Owners in a predominantly rented block often have problems in contacting fellow owners and members of the management company. If owners cannot make a management company work, they run the risk of losing money on their investment because apartments in run-down complexes are difficult to rent out. If the management company fails to file financial returns, they risk heavy penalties and it would decrease the re-sale value of apartments in the complex.

5.3 Management Agents

In some responses, the management company and management agents were considered as one entity. The appointment of a competent agent is of paramount importance for the successful management of a multi-unit dwelling. Many respondents complain about poor service[59]:

> "Bad experience, uncollected refuse over an eight week period over Christmas, rats reported in building, nothing done for five weeks. Fire safety not up to standard, break glass units not connected, list could be endless!!"

> "I am ashamed to have friends call to my front door and see the state of the estate."

Another frequent complaint is that agents are difficult to contact and do not seem to know the complex/estate they are supposed to look after:

> "They are very hard to get in contact with and they are very slow to answering e-mails. At times they can make you feel foolish as they belittle you. They act as if any of the problems you bring to their attention are small. They also make you feel like you are the nuisance. I personally think that all staff should be brought on a tour of any development that the management agent has so that they know where people are talking about when they are trying to explain any problems they have."

[59] 47 per cent of respondents indicated that they had problems with neglectful management agents.

A change in agent can bring about improvements. One of the difficulties with developer controlled complexes is that residents cannot affect such a change because the developer appointed the agents and may have some business agreement with them.

> "We changed agents from X who were dreadful to Y who are better at keeping the grounds maintained and being friendly."

> "We now have a new board of directors and they have appointed a new management agent, and it seems to be working well and the problems are rapidly disappearing."

In a series of surveys conducted by ODPM60, a leading management agent company, clients indicated the following preferences with respect to the services from management agent:

- Value for money
- Prompt response times
- Good communications
- Stability of Property Manager
- Good financial management
- Good appearance
- Manage proactively

[60] O'Dwyer Property Management.

The appointment of a new management agent is a difficult task for a voluntary body. In Ireland, as of now, there are no guidelines issued and no checklists available to assist the board in the vetting procedure.[61]

5.4 Service Charges / Sinking Fund

The level of charges imposed on residents in multi-unit dwellings was the most frequently commented on topic in our survey.[62]

People living in housing estates complain at having to pay at all and many of them are withholding payments or only part-pay (see above).

Others make the points that the fees are too high for the service they receive:

> "Bad service, fees too heavy for a bad service."

> "Nobody minds paying for something if a proper service is maintained."

Only a small proportion of those asked are aware of a sinking fund put aside for bigger expenditure. However, non-payment of charges and the absence of a sinking fund will leave the management company short of money and they will not be able to provide even the most basic services, leading to more complaints and more refusal to pay.

---

[61] See consumer checklists Sections 5.8 and Section 6.2.

[62] 58 per cent of respondents indicated they had problems with the level of service charge/management fee.

Some complexes charge interest on amounts withheld. The moneys owned will be deducted from the value of an apartment upon sale.

However, one respondent made the valid point that the concentration on the level of service charges was ill-advised since different complexes would have different needs.

> "There is too much emphasis on "how much people pay", without anything like enough emphasis on understanding "how much people are getting". In addition to ensuring that fees are well spent (i.e. value for money) it is important to ensure that ENOUGH money is being collected to cope with the requirement to improve (and not simply maintain) standards continually in order to keep pace with the marketplace, to improve safety systems in order to keep pace with legislation and best practice, to put money aside every year in order to average out the cost of high cost cyclical jobs such as repainting and recarpeting, to ensure that money is put aside for maintenance with an understanding that as the premises get older, the maintenance costs will rise and items such as lifts and gates will need eventually to be replaced, and to put aside a true sinking fund to be ready for the "unexpected". Continual talk of "how much do you pay" militates against such prudent financial planning. This can be obviated, by sending detailed information to members, but in addition to the high toll this takes on an unpaid volunteer board, it does not prevent the negative impression given to a third party enquiring about level of fees, and it becomes

lonely continually trying to educate the world! There needs to be a public understanding that the fee cannot be decided in a top down (how much should we pay) process, but must be arrived at from the bottom up (what standards and services do we want)."

One respondent raised the issue of the sinking fund and the problems high charges pose for elderly people on fixed incomes:

> "Difficult to raise funding for big investment: sinking fund necessary. If large number of non-resident owners (rented), they are disinterested, danger of complex rundown; number of elderly people on fixed pensions increases very exposed to increased charges, forced to move."

5.5 Respondents' recommendations for intending buyers

The recommendations of respondents to our survey emphasise the lack of understanding about what is entailed in apartment living. The survey included a question on what respondents would have like to have known before buying into a multi-unit complex. Information relating to the structure of management, contractual details and the state of the complex as well as the financial health of the management company featured strongly as the following excerpts show.

5.5.1 Information on the structure of management and contractual details

The need to know about the structure of the management of the

complex is expressed below:

> “What are the exact responsibilities of management companies/management agents, how much will charges increase by, who are directors of the management company/management agent, how to contact him/her, when will services be carried out, i.e. weekly, monthly, annually”

> “Note that you are buying shares in a limited company – it is not an independent residence - look at the accounts for the previous year – enquire and see if there are expected expenditure – look at age of lift - car space/spaces - how many owner occupied apartments in the building”

> “That I was not “buying an apartment” but joining a company which I would jointly own and be responsible for running an apartment complex, of which the board of directors would be a voluntary unpaid group chosen from our members.”

> “ALL hidden items contained in the contract.”

> “A contract with the management company that defines the services they will provide and a calendar to go with it.”

5.5.2 Information on state of the apartment complex/state of finances of Management Company

The physical state of the apartment complex into which one buys has major implications on the service charges needed to maintain it. Below we reproduce some suggestions as given by respondents of the survey:

“That the apartment and the entire complex was passed as suitable by an independent professional statutory appointed body.”

”3 year projection of management fee”

”Provision of detailed accounts (of expenditure in the previous year and clarification on what elements of the fee have increased), when maintenance fee is due annually. Confirmation of whether a sinking fund has been established.”

”There should be a requirement that the buildings are structurally reviewed every 5 years to detect physical problems, made available to each resident and potential buyer so that they know what to expect. Have problems been dealt with? If not, there is the probability that levy will arise”

5.6 Respondents’ recommendations upon completion of purchase

When asked what they would have liked to know upon taking up residence in their new home, a number of respondents referred to the importance of being part of the management company.

“Make contact with the management company. If you intend having tenants advise the management of this and give names and details car no’s etc. Attend AGM”

“That we had the power to take decisions, hire suppliers of our choice, fire suppliers (including the managing agent) who did not perform, and really “own” our own destiny.”

> “Right of access to annual accounts within he management company; appoint a health and safety person to provide details to residents, freeing up of emergency access routes”

> “Introduction to management company, meeting other members”

It is important to keep a continuous check on the state of the building:

> “Upon taking up residence a detailed snag list for the apartments and common areas should be completed especially the following areas: electrical, plumbing, fire safety, sound, roof, storm water gullies”

Practicalities like subletting of car-parking spaces at locations near the city centre were mentioned.

One respondent summed his/her experience up as follows:

> “With hard work and determination you can get results from management agent but it is a battle.”

5.7 Respondents’ recommendations upon sale of property

The most important lesson passed on by respondents is reproduced below:

> “If you don’t pay your fees then any outstanding debts can be tied to your house and deducted from the money you receive once the sale is gone through.”

5.8 Consumer Information

In our consultations with representative bodies and with individual consumers as well as through the results of the survey we were astonished by the absence of comprehensive consumer information. Buying an apartment/unit in a gated complex or housing estate is a part of life for an increasing number of people. Yet regulations and information are thin on the ground.

In this section we present a number of checklists/information for consumers at different stages of the process. However, we recommend[63] that a concerted effort be made to publish a comprehensive booklet of essential consumer information [Recommendation 5]. This could be led by the NCA and would need the cooperation of the major stakeholders, including the Society of Chartered Surveyors, the National Property Services Regulatory Authority, estate agents and legal expertise.

It is further recommended that this booklet should be ready well in advance of the legislation establishing the NPSRA given the vulnerability of consumers in the interim and the likelihood that the primary focus of the NPSRA in its early days will be on the proposed licensing system [Recommendation 6]

It should be the responsibility of the purchaser's solicitor to ensure that the buyer is fully aware of, and understands, the contents of this booklet, what he is taking on in buying into a multi-unit development and the various relationships of the main entities

[63] See recommendations Section 6.2

[Recommendation 7]. This way the protection of the consumer is assured. Essentially the 'services' provided by the solicitor should include this information service. The information should be made available through all media channels, including the internet and be presented to potential buyers at estate agents' and solicitors' offices.

The following checklists could be made available via the NCA website, estate agents and solicitors:

- Things you should know before buying your apartment (leaflet)
- Before buying an apartment/house in a multi-unit complex – check out maintenance, management, service charges
- Upon taking up residence – check out your rights and obligations as a resident in a multi-unit housing complex
- Things you should question upon receipt of service charge bill
- Appointing a management agent (vital information for management companies)

5.9 Things you should know before buying your apartment[64]

Before you make the decision to purchase your new apartment, you need to be fully aware of how apartments in Ireland are owned

[64] This leaflet was drafted for us by a Director of a management company for a major complex comprising approximately 250 apartments in Dublin City. We are grateful for his assistance.

and run, and understand that you will have a part to play in the upkeep and management of the whole apartment block. This leaflet is a guide only, your solicitor can give you more information. Check that these guidelines each apply to the particular development you are joining, and check out for you the health of the management company in the development.

Buying an apartment is not the same in legal terms as buying a house. This is simply because your apartment is part of a development, and cannot stand alone, but may share walls, corridors, gardens and other “common areas” with other homes. Therefore you cannot own your apartment outright, or “freehold” as you might own a house. Instead, you will become a member of a company, known as the “management company”, which as a body will own the entire development. The management company is the owners’ company. Each member will hold a “lease” on their apartment. The leasehold is a very long lease (perhaps as long as 999 years!) which you can sell on to a new owner when you wish, or leave behind you in your will.

This management company has a legal responsibility to maintain the standard of the development. That means that you, and your fellow owners, are responsible for the upkeep not just of the apartments, but all the common areas too.

Like all companies, the management company must operate within a defined set of rules, set down in documents called the “Memorandum and Articles of Association” or the “Memo & Arts” of the Company. You can get a copy of the Memo and Arts from the company itself.

Each member must pay a set percentage of the overall cost of the upkeep of the development every year. Together you will have to pay for all the costs associated with running the development, from insurance to gardening, from re-painting every few years to all routine and emergency repairs, from refuse removal to paying an agent to answer calls and send out the bills. The percentage of the fee which you must pay will be set down in your lease.

You will be asked to attend an Annual General Meeting (AGM) of the management company each year, where a number of members must agree to serve on the board of the company. They will form the decision making body for the year, including deciding on the standards and the services which you wish to have in the development. They will set the budget to achieve these standards, which will be subdivided between you all as described in 3 above. You will not be paid for your work on the board, all members are voluntary and unpaid, as set down in the Memo & Arts of your company. At every AGM all the members of the board must resign, but can be proposed for re-election if they wish.

Every year the board must send out a copy of the budget for the coming year, outlining what services the company intends to purchase during the year, how much money must be put aside to build up funds for future jobs such as painting or re-carpeting, which do not happen every year, and how much money the company is hoping to put aside in a reserve for unforeseen expenses (this reserve is known as the “sinking fund”). As described in no. 4, every member must pay their share of this budgeted amount.

Prior to the AGM each year, every member must be shown a

copy of the Company's accounts for the previous year, verified by an independent auditor. This outlines how the money was actually spent during the year, and how much is left over in the various reserves and sinking fund. At the AGM the members must vote to ratify the accounts so that they can be lodged with the Companies Office, which is a legal requirement.

The board may decide to engage various suppliers, such as a gardener, a cleaning company, etc. In addition, they usually will employ a "Management Agent", a company which will give professional help to run the complex, including keeping the account books, being available to organise help for members who have problems relating to the common areas, sending out the bills, and ensuring that bills are paid. However, the responsibility for ensuring that your development is maintained belongs ultimately not to any agent or supplier, but to the management company of which you are a member.

If you are buying an apartment where there already is an established management company, you should check out, using your solicitor if necessary, that the management company has fulfilled its requirement to lodge accounts with the Companies Office each year, that there is a good and active board of directors, that the fees include money for all the services and standards that you will expect, and that there are healthy reserves and an adequate sinking fund.

Taking on the responsibilities of being a member of the management company may not be for you, - it is important that you understand these responsibilities before you join. Involvement in

running the development can mean a lot of work, and remember, if you are not willing to get involved, you are depending that there will always be a committed group of unpaid volunteers to maintain the standards on your behalf. Whether you get involved or not, once you sign up as a member of the company, it's a joint responsibility!

5.10 Before buying an apartment/house in a multi-unit complex – check this

First make sure you have read "Things you should know before buying your apartment". It explains how apartments in Ireland are run.

5.10.1 Maintenance

Before you consider buying a unit in a multi-unit property you need to be satisfied that the current standard of maintenance is high. Be aware that very high specification of common areas inside the building and in the grounds has to be maintained and will have to be paid for by the owners. This will be reflected in high service charges.

If the building looks like it needs a major overhaul if is essential that you enquire about the state of the sinking fund. It is likely that additional levies will be imposed on owners if the sinking fund is not sufficiently large to pay for big unexpected expenses.

Upon viewing the property

- Check the extent of the common areas.

Generally: the more extensive the common areas, the more it will

cost to maintain them. Duplexes (with their own entrances to each apartment) have fewer shared areas than apartment blocks with lifts, entrance halls and corridors) and subsequently often have lower service charges.

- What are the rules relating to the use of the common areas (who can use what and when):
    - Car parking (check where car park space is – a lot of conflicts arise over cars parked in the “wrong” spaces)
    - Garden area
    - Lawns
    - Playgrounds
- Are the grounds (waste collection point, entrance gate, foot paths, lighting) around the complex kept in good order? It is a good idea to visit at night to check the condition of lighting in the grounds.
- Is the building (outside walls, corridors, entrance, lift) well maintained? Is it due a general upgrade? (If yes, you will be asked to contribute to that cost).
- Are the building and grounds easy to maintain? Look out for expensive features like ponds, fountains, extensive wood used on outside of building and inside (wood needs a lot of maintenance, features like ponds will have to be maintained by the residents)

- Is there easy access for emergency vehicles?

Before buying the property

After viewing the property and the common areas associated with the complex, it is important to get further professional information about the structure of the complex, the state of repair and the frequency of planned maintenance. In this, the estate agent (seller) will be able to give you some information. However, it is essential to get a professional chartered surveyor's report done which will be able answer questions re structure and safety.

- When was the last major overhaul of the complex carried out? Demand to see what work ought to have been done (surveyor's report) and check out if work is still outstanding. This can have major implications on the level of service charge you will be required to pay[65].

- When was the last fire inspection carried out? Are there any outstanding issues with respect to Health and Safety?

- Is there a Health and Safety Statement? Is it clearly displayed?

- Are the fire exits free and clearly marked?

- Are lifts and gates working satisfactorily? Check out when they were last serviced?

---

[65] If major work has just been completed satisfactorily, the sinking fund may be low, but will not be needed for a couple of years. If some work has not been done, demand for extra funding may arise soon after purchase of

- What security measures are in place: CCTV, intercom, alarm system, safe entrance procedure (PIN code) and are all these components functional/frequently checked?

- Make sure that the plumbing is satisfactory – water leaks are a major problem in apartment blocks that have not been maintained properly.

5.10.2 Management

The quality of the management of a multi-unit complex, be it in an apartment or a housing estate where there is a management company, is of crucial importance as it impacts directly on the level of service you get, the amount of service charges you pay and ultimately on the value of your property and your quality of life.

Find out as much as you can initially from the person who wants to sell you a unit (developer/estate agent) and – if you want to go ahead with a purchase - from your solicitor (**before** paying any deposits and signing any contract). If you are not happy – walk away.

If estate will not be taken in charge by the local authority (because there is a management company), make sure you check out the following:

- Does the contract contain a reference to a management company which manages the estate? Make sure that your solicitor explains all implications arising from that fact to you.

---

property. If no major refurbishment has been conducted for at least five years, there will be big demands on the sinking fund – and if it proves to be inadequate, all property owners will be expected to contribute.

- Is the management company still dominated by the developer? Have the common areas been handed over by the developer? What is the management company's registered name?

- Have annual returns and accounts been filed? (Failure to do so can lead to huge fines from the Company Registration Office and may lead to difficulties when selling a property). You have the right to glean financial information from these files which are held in the Company Registration Office.

- Who is the management agent?

- What other estates are managed by the management agent? Make a point of visiting these estates to see the quality of management there yourself.

- Is there a residents association in place? It may be wise to talk to an officer of that group to find out about relationships between residents and the management company/agent.

- Are residents in conflict with the management company (i.e. refusing to pay service charges)? In that case, the management company may eventually fold and services will be suspended. This is a certain no-go area![66]

Check this before buying in a multi-unit complex

[66] All services were temporarily suspended in March 2005 in Castlecurragh estate due to the financial situation of the Management Company. This was due to non-payment of service charges by Castlecurragh residents. As a result of services been suspended the area went 'to pot'.

- Is there a functioning management company in place? (If buying in an established complex)
- When was the last AGM?
- Is there a Health and Safety officer in the management company?
- If you are considering buying off the plans, make sure your solicitor reads the Memorandum and Articles of Association carefully and can advise you of the developer's intentions.
- What are the voting arrangements on the management company (Is the developer in control? Have the wording of the Memorandum and Articles of Association carefully examined as to the allocation of votes to various parties.)
- Have the common areas (inside the building and the shared outdoor areas) been handed over to the residents?
- Have annual returns and accounts been filed? (Failure to do so can lead to huge fines from the Company Registration Office and may lead to difficulties when selling a property)

- You have the right to glean financial information from these files which are held in the Company Registration Office.

The management company usually appoints a management agent to manage the complex on its behalf. The agent is then contractually bound to fulfil certain duties.

- Who is the management agent in the complex?
- Will there be a caretaker on-site?
- What other complexes are managed by the management agent?
- Check out if they are of similar size/complexity to your development and where they are located. Make a point of visiting these developments to see the quality of management there yourself
- Look the agent up in the Yellow Pages.

5.10.3 Service Charges / Sinking Fund

When you buy an apartment/unit in a development you automatically become a member of the management company which runs the common areas of your complex. Each member must pay a set percentage of the overall cost of the upkeep of the development every year. Together you will have to pay for all the costs associated with running the development, from insurance to gardening, from re-painting every few years to all routine and emergency repairs, from refuse removal to paying an agent to answer calls and send out the bills. The percentage of the fee which you must pay will be set down in the lease you sign with your solicitor.

If you are buying a new unit: Be aware that some developers may set the service charge artificially low in the first year so as to make the property more attractive to purchasers. It is easy to maintain a new property, but soon charges can be expected to

increase as maintenance demands grow. Check out the service charges applicable in comparable complexes in your area that have been operating for some time.

- Check with your solicitor how the service charges have been apportioned to individual owners (in your lease).
- Find out about the amount of service charge you are expected to pay and demand as detailed a list of services paid for as possible.
- Find out about service charges in similar developments (age, size, style) in the area.
- Demand a five year projection of service charges and management fees.
- Demand to see the most recent set of financial statements from the Management Company.
- Enquire about the state of the sinking fund. The absence of a sinking fund or a low reserve fund invariably will mean that owners will have to pay extra levies when significant work has to be done.
- Is there a history of withholding charges in the complex? By not paying service charges, residents damage the financial health of the management company and its ability to maintain the building and its common areas. This in turn will have negative implications on the value of your investment.

5.11 Upon taking up residence: Your rights as a

resident in a multi-unit development complex – check this

Remember, that you are not just “buying an apartment” but joining a company which will jointly own and be responsible for the running of your apartment complex. Its board of directors is a voluntary unpaid group chosen from amongst all owners. You thus have the power to take decisions, hire suppliers of your choice, fire suppliers (including the management agent) who did not perform, and really “own” your own destiny.

The efficient running of the management company, which is the owners’ company, is of paramount importance because it ensures that the complex is maintained to the standard required by its residents. An efficient management company will keep service charges reasonable by keeping tight control over the management agent and other service providers and by ensuring that there is a well funded sinking fund to deal with unexpected repair and major maintenance work. All unit owners in a development should take an active role in their management company to ensure it is well run and will thus preserve the value of their investment.

5.11.1 Membership of Management Company

- The standard conveyancing documentation generally will impose the requirement on the purchaser to become a member of the management company.

- New owners should be admitted to membership of the management company upon completion of purchase (if the development has been finished).[67]

- Assuming the buyers are admitted to membership when they purchase the property, the register of members should be made available free of charge for two hours every day. If members encounter difficulty they can refer the matter to the Director of Corporate Enforcement.

- Investors who live elsewhere may find it difficult to establish the identity of other investors (particularly in a development with predominately rented accommodation)

- One way of discovering the identities of other investors in a development is to call on the secretary of the management company to furnish a list of members.

- Members have the right of access to the management company's annual accounts.

- All members are entitled to attend and vote at the management company's AGM. An AGM should be held within 18 months and after that every year, or at least every 15 months.

- If no AGM is held it is possible to call upon the Minister for Enterprise, Trade and Employment to demand an AGM or to

[67] At present there is no time limit imposed on the hand-over of a development to residents. A developer could claim to be still working on the site ten years after the first sales were closed.

take actions through the Office of the Director of Corporate Enforcement to replace the directors.

5.11.2 Management Agents

If the management company (consisting of the owners) is not satisfied with the management agent looking after the complex, it can appoint a different one, having gone through the proper tendering processes.

- Management agents are legally obliged to show members the annual accounts. If the development hasn't been handed over to the owners one solution could be to request the information through the company's auditor - the details of the auditor can be found through the Companies Registration Office.

5.12 Upon receipt of service charge bill – check this

The service charge bill has to be delivered to each individual units – display in common areas is not sufficient.

Check the following questions with reference to your lease document:

- Is the invoice timely (i.e. at the interval as laid down in the contract)?
- Has the total cost been broken down into its components?
- Do the costs relate to your building?
- Are total costs shared as agreed in the lease document?

- Are the costs of empty apartments borne by their owners?
- Are commercial units shown separately (where appropriate)?
- Are all items charged as agreed in the lease document?
- If “other costs” are shown: are they broken down sufficiently and as agreed in the lease document?
- Does the statement/bill appear reasonable and understandable?

If one or more questions are answered with NO, it can be assumed that the invoice/statement is not correct/proper. Comparison with the previous statement can also prove useful.

If problems arise with management fees, service charges or the sinking fund, the individual property owner should contact the complex’s management company for clarification. They in turn will approach the management agent.

If the management company fails to hold an AGM in a particular year, you can ask the Director of Corporate Enforcement to require that an AGM be held. The Director’s staff will also try to secure the rectification of any failure by a company or its directors to make available to members the company’s annual accounts. In fact if you have concerns about any company law matter, you should consult the published guidance material which is available at www.odce.ie. This may enable you to take steps yourself to assert your rights or to prepare an appropriate complaint to the Director’s Office.

5.13 When appointing a management agent – check this68

The appointment of a new management agent is often the first act of a newly constituted management company. This is a very important stage in any development's management and needs to be carefully planned. The level of service charge that each unit holder pays depends directly on the ability of the management agent to provide a competent and competitively priced service.

Below we give a detailed outline of what is involved in the appointment process. The accompanying documentation can be found in Appendix 6.

Specification

You should be clear what tasks you want the agent to carry out. It is prudent to set these out in the form of a specification, to be evaluated by prospective agents as a tender. It may be appropriate to consult a surveyor experienced in property management. The surveyor can, under your instruction, draw up a formal specification of duties, for discussion with prospective agents.

In cases of small buildings, the input of a surveyor may not be justifiable, but you should then agree the basic list of tasks before interviewing agents. Where the management company is taking over responsibility for management for the first time, it will be

[68] Adapted from LEASE, the Leasehold Advisory Service in the UK.

sensible to arrange for a structural and condition survey of the building, in order to be able to assess future repair, maintenance and improvement obligations. This can be carried out in advance of the appointment of the agent or it could be one of the tasks included in the specified tasks.

Agents' qualifications

There are no specific qualifications for a management agent, but there may be following the establishment of the National Property Services Regulatory Body.

Agents' insurances

It is most important to confirm the prospective agent's professional indemnity insurance. If the agent is a member of a professional or trade association, professional indemnity insurance will be an automatic condition of membership. However, the existence of the cover, and its extent, must be checked. Where a management company delegates tasks to a management agent, the residents' management company will remain legally answerable for any neglect, omission or mistake by the agent and must be sure that the agent has the means for compensation or damages.

References

Experienced management agents should be able to provide references from the management companies of other buildings they manage or have managed. You should seek references in respect of buildings similar to your own. You should seek agents that have previous experience in managing similar schemes to your own.

Procedures

To start with, you should write to a selected group of agents inviting them to tender for the work. You may know some local agents or you can consult the Yellow Pages (listings under Property Management). Unless you are really unhappy with your present management agent, it may be worth considering them. Ask yourselves how efficient they have been in dealing with your complaints; did they act promptly on minor repairs? Allowing for the fact that they were given instructions by the developer (before the development was handed over), did they behave in a reasonable manner where your problems were concerned? You may find that their service will be fully acceptable when they are answerable to you.

It is most important that you invite prospective agents to the building, to see it and to meet the management committee. Ideally, in the course of discussion, try to meet the person who will actually be managing the building - the personal relationship is an important element in property management. Similarly, try to visit other buildings presently managed by the prospective agent yourselves, and judge their competence on the ground.

When you interview prospective agents, do not be afraid to ask questions and to negotiate fees. For example:

- What arrangements does the agent have for general maintenance inspections?
- How are minor repairs responded to and in what timescale?
- How are service charge monies collected and what are the

agent's banking arrangements - what arrangements are made regarding interest?

- How are contractors chosen?
- What arrangements are to be provided for emergency out-of-hours callouts?
- What commissions would the agent be entitled to receive from any contracts arising out of the services to you? A good agent should declare all such commissions to you.

The agent chosen may provide a draft contract or the management company's solicitor may draw one up.

Always seek independent legal advice before entering into the contract.

Documentation

Documentation should include:

- a draft letter inviting tenders (set out in Appendix 2);
- the letter should include a checklist for your building (see Appendix 3);
- a specification of services, or, if this is not appropriate, a simple list of tasks (see Appendix 4);
- plus, you should ask for details of qualifications, experience and references in respect of blocks presently managed (see Appendices 5 and 6).

Getting the best from your management agent

The agent cannot work in a vacuum and it is critical to future management arrangements to establish at the outset:

- what responsibilities and authorities that agent will have;
- standards of work demanded;
- response times and other timescales for action;
- the authorised lines of reporting and communication.

Both the management company and the agent must be clear as to from whom instruction is to be received. The usual and most effective arrangement is for the agent to attend, and report to, meetings of the Board of the Management Company. By treating the agent as a form of general manager, he or she will provide useful input to policy and take overall responsibility for day-to-day affairs. Meetings should be properly organised and the Board's instructions to the agent clearly set down in the minutes.

The Board should set clear lines of communication, understood and observed by both sides. The agent should not need to interpret unclear instructions, nor should they receive differing instructions from individual members of the Board.

Remember that the agent cannot take instructions from the Board that would put him/her in breach of any law, code of practice or other statutory guidance.

The Board should also establish how the agent is to respond to questions from individual residents and his accountability to those

individuals. The residents should be clearly informed by the Board of the identity of the agent, his duties and the limits of his authority. Although the agent will be working for the residents as a whole, his employer is the Board, and the residents must be clear that he carries the authority and support of the Board in all his actions. The agent should not be placed in any position of ambiguity in dealing with individual flats-owners and, of course, cannot take instructions from them.

6.0 Conclusions and Recommendations

The conclusions and recommendations arising from this report are set out under five headings:

- Regulation of the Sector
- The Consumer
- Management Company
- Management Agent
- Service Charges and Sinking Funds
- Other Issues

Where action is required on foot of a recommendation the department or agency responsible is noted.

6.1 Regulation of the Sector

The Auctioneering/Estate Agency Review Group Report highlighted the current unregulated status of property management agencies. Although the property management sector was outside the scope of the review, the Report made a number of recommendations for the auctioneering/estate agency sector, many of which can be applied in the property management sector.

6.1.1 National Property Services Regulatory Authority

The Review report called for the establishment as a matter of urgency of a statutory National Regulatory Authority to underpin new regulatory arrangements in the auctioneering sector aimed at achieving uniformity and transparency in licensing, regulation and information provision. The draft heads of the bill giving effect to the new authority are currently being prepared by the Department of justice, Equality and Law Reform.

The establishment of the National Property Services Regulatory Authority (NPSRA) is a very positive development which will be also responsible for drawing up the rules and regulations which will deliver best practice, professional service and a competitive property management market.

Other recommendations are included in the Review Group report and will be important elements of the regulatory framework for property management agents. They include the following:

Licensing

The Regulatory Authority should be responsible for awarding licences and should have the powers to act against unlicenced operators. All residential property management firms and or any person providing property management services should have to hold a licence to act as a property management agency. In order to get a licence, the firm or individual should have to demonstrate certain competencies. It should be a criminal offence to practice in property management or as a letting agent without a licence. The NPSRA should keep a register of licenced holders by trade name

which will be accessible to the public.

Licence Fee

The current flat licence fee (irrespective of size of enterprise) should be replaced by a three-tier fee structure with fees for each band related to size and turnover. The fees collected are to enable the Regulatory Authority to carry out its key roles of licensing, regulation and information.

Qualifications and Professional Indemnity

All applicants for a licence should be required to have relevant educational qualifications, professional indemnity insurance, an external accountant certificate that client funds and systems are appropriate and should have the necessary resources to run a practice. Furthermore the practice should be required to demonstrate that their principals and staff keep abreast of changing legislation and best practice to serve their clients well and in a professional manner.

Consumer Complaints

A key element of the task of regulation should to deal with consumer complaints. The new Regulatory Authority should have powers to carry out investigations on foot of a complaint including the right of entry and access to all files, the right to impose sanctions and to withdraw licence.

We strongly support the establishment of the NPSRA and the main elements of the proposed Regulatory Framework, the legislation for which is being drafted by the Department of Justice,

Equality and Law Reform.

Recommendation 1

The National Property Services Regulatory Authority Bill should be prioritised in the Government's programme to ensure that it is enacted as a matter of urgency. This will ensure early protection for the consumer.

Recommendation 2

Where possible the recommendations that exist for the auctioneering/estate agency sector should be replicated in the property management (i.e. management companies and managing agents) sector.

R1 and R2 Action: Department of Justice, Equality and Law Reform.

6.1.2 Financial Services Legislation

In view of the very substantial sums held and handled by management agents, and the financial advice they provide in terms of insurance and long-term building maintenance, there is a case for their inclusion within Financial Services Act requirements.

Recommendation 3

The NPSRA should consult with the Irish Financial Services Regulatory Authority (IFSRA) to establish best practice in regard to the financial arrangements of property management companies and in regard to ensuring the adequacy of the provisions for sinking funds and insurance (see R23). Arrangements for the better

protection of clients' monies should also be considered by the IFSRA, including new legislation for the holding of client accounts, as recommended by the Auctioneering/Estate Agency Review Group Report.

6.1.3 Property Services Statutory Interest Accounts

In Australia the NSW Government takes a proportion of the interest paid on all strata trust accounts which is used to fund the Residential Tribunal Service and other activities relating to dispute resolution. Property services statutory interest accounts provide a means for leaseholders (owners) to directly fund services beneficial to them, such as a regulatory regime for management agents. The prescribed percentage in New South Wales is 60% of the interest on the daily balances of monies held in the designated account after the end of each calendar month.

Recommendation 4

A similar proposal here might be considered by the National Property Services Regulatory Authority in consultation with the Financial Services Regulator. The funds accumulated, based on an agreed percentage of the interest amount, could be accrued either for the benefit of the management company or for the Regulator, who would have responsibility for regulating management companies.

R3 and R4 Action: National Property Services Regulatory Authority (NPSRA) and the Irish Financial Services Regulatory Authority (IFSRA).

6.2 The Consumer

We understand that the new Regulatory Authority is to have a consumer information function and would, therefore, be well placed to consider, in association with the National Consumer Agency, the best approach in such matters.

6.2.1 Consumer Awareness and Information

The key issue of concern is consumer awareness and ensuring that the consumer has full information available to him/her when buying in a multi-unit development. The consultation exercise carried out for this survey together with the consumer survey suggests that there is a lack of understanding by owners and tenants of the various types of entities which exist in the property management sector, and of the legal responsibilities and obligations associated with the purchase of dwellings in multi-unit complexes.

Recommendation 5

The National Consumer Agency (NCA), possibly in association with the Society of Chartered Surveyors and other key stakeholders in the property management sector should compile a booklet of relevant information for potential buyers and owners of property in multi-unit developments and for members of management companies. This booklet should contain information like the respective roles of the owner, management company and management agent; what to look out for in a building; where to go to have an assessment of the state of maintenance/repair of the building; where to go for information or to make complaints; and the

role of the Regulator. It should also contain a consumer checklist of issues to be aware of before buying into a multi-unit development. This information source should be available at all estate agents, solicitors and in information centres like the Citizen Information Centres and on the NCA website.

Recommendation 6

This booklet should be ready well in advance of the legislation establishing the NPSRA given the vulnerability of consumers in the interim and the likelihood that the primary focus of the NPSRA in its early days will be on the proposed licensing system.

R5 and R6 Action: National Consumer Agency (NCA) and the Society of Chartered Surveyors (SCS).

Recommendation 7

It should be the responsibility of the purchaser's solicitor to ensure that the buyer is fully aware of, and understands, the contents of this booklet, what he is taking on in buying into a multi-unit development and the various relationships of the main entities. This way the protection of the consumer is assured. Essentially the 'services' provided by the solicitor should include this information service.

R7 Action: The Law Society of Ireland.

6.2.2 Surveys to Ascertain Information on this New Living Culture

Since the trend towards apartment living is a new phenomenon and there is very little information available about the sector, it is recommended that two surveys be conducted to generate a data bank on various aspects of this new living culture:

Comprehensive Survey of Consumers

Recommendation 8

The small survey conducted for this study provided some interesting insights into the issues that consumers are concerned about. While this survey was extremely short and could not claim to be representative in a statistical sense, it is recommended that the NCA, as the voice of the consumer, should conduct a major representative consumer survey on consumer issues over the coming months to ascertain their views on the whole area of property management, including their views on management companies, management agents, management fees and service charges. It would be preferable if the result of this survey were ready before the report of the Law Reform Commission is published (expected after the summer). It could provide some useful information to the NCA for its response to the LRC report and the legislation establishing the NPSRA. Such a survey could be done periodically, say every three years, to monitor the impact of changes introduced over time.

R8 Action: The National Consumer Agency (NCA).

A Survey of Management Fees and Service Charges

In Germany, a group representing apartment owners (Wohnen im Eigentum e.V.) have asked owners to send them their annual service/management charge statements, enabling them to compile regional comparisons of charges (service charge broken down into several sub-headings) per square metre of living area in different types of multi-unit developments. They also compared contributions to sinking funds. The results of the first survey were published in 2005 together with information on legal issues, tips on how to proceed when charges are perceived to be too high and advice on reducing costs.

However, in order to arrive at meaningful conclusions and to make meaningful comparisons, we recommend that further information about the following should also be sought:

- Type of building (number of units, age)
- State of maintenance
- The regularity of upgrading work
- The status of the sinking fund
- Geographical region

Recommendation 9

Thus in order to provide consumers (property owners/tenants) with relevant comparisons for their service charges, management fees and sinking fund allocations, the NCA or the National Property Services Regulatory Authority should undertake a national survey

of service charges and management fees.

R9 Action: The National Consumer Agency (NCA) and (NPSRA).

6.2.3 Lease Agreement

Bearing in mind the primacy of the lease document, defining the respective roles and obligations of the parties to the property transaction and their interrelationships with one and other, it is essential that the lease provisions be understood by all and, in particular, the owner/tenant as consumer.

Recommendation 10

Invariably, however, the document is drafted in turgid and incomprehensible legal language rendering it difficult for the consumer to understand. While we accept the importance of the adherence to legal precedent and authority in the drafting of the lease, we recommend that the solicitor for the developer/management company provide to the owner/tenant, as consumers, a plain English summary of its essential terms, together with an explanatory memorandum as to how the particular multi-unit development is expected to operate.

R10 Action: The Law Society of Ireland.

6.3 The Management Company

6.3.1 Change of Name

Recommendation 11

There appears to be considerable confusion over the terms used to define the main players in the property management sector, most notably about the differences between management companies and management agents. Both terms are often used interchangeably. Thus it is recommended that once the developer has handed over control of the complex to the owners, there should be a name change from “management company” to “owners’ company” which is something similar to the term used in Australia to describe a management company (“Owners Corporation”). As well as eliminating the confusion, it would make it very clear to the residents of the complex that it is a company consisting of the owners of units in the building complex. It would also signify a new beginning. This should be the name from the outset and should be part of the Memorandum and Articles of Association establishing the company. We believe that this requirement should be requested by the Regulator and should be facilitated in company law.

R11 Action: NPSRA (in consultation with the CLRG)

6.3.2 Completions Certificate certified by an Independent Architect/Building Surveyor

Recommendation 12

There is no legal means for enforcing satisfactory completion of an estate. Indeed the definition of ‘satisfactory completion’ is open to considerable interpretation. The key issue is more to do with how to ensure that the developer completes the development or individual phases of his development within the terms and conditions of, and to the standards set down in, his planning

permission.

As there is no obligation set down anywhere on the developer to complete a snag list in relation to the common areas, we believe that the contract between the developer and the management company to convey the title of the buildings and common areas to the management company should include a contractual obligation on the developer to attend to the management company's snag list prepared by an independent architect/surveyor. The developer should be required to furnish a completion certificate certified by the architect on completion. This certification should confirm that the architect is satisfied that the common areas and other cosmetic finishes are completed in accordance with the developer's obligation under the lease. The independent building surveyor should prepare a professional report on any outstanding matters that need to be addressed. This is to be done and completed post the snag list or within 3 months from the date of completion of the last unit within the development.

The management company's first service charge budget should provide for the company's expense in appointing an independent architect/surveyor to carry out snagging and ensure the estate and all cosmetic finishes are completed to the appropriate standards.

R12 Action: The Department of the Environment, Heritage and Local Government by means of an amendment to the Planning and Development Act 2002).

6.3.3 The Process of Handing Over to the Owners

Recommendation 13

While recognising that during the construction phase of the development the developer will necessarily require to control the management company, it is important that the transfer of control to the owners from the developer happens as quickly as possible. Subject to recommendation 12 being workable in practice, the developer's solicitor should (at no cost) transfer ownership of the building to the owners within three months of the completion certificate being issued. On transfer to the owners, they will elect their own Board of Directors to manage the complex and will regulate the voting rights attaching to shares, including subscriber shares in the management company. (The original subscriber members are required to resign 60 days after the last unit is sold - a provision which should be provided for in the management company agreement with the developer). If the owners have not taken control of the management company from the developer within the specified three month period, the matter should be referred to the NPSRA.

R13 Action: The developer's solicitor

6.3.4 Voting Rights for Members

Recommendation 14

We believe that a strong case exists for restricting the voting rights to one vote per household, irrespective of tenure. Therefore, someone owning one or more apartments in the scheme, but not living there, should be required to offer the right to participate in the management company to his/her tenants.

This is probably the most contentious issue and we are aware

that there is general agreement in favour of one owner one vote, which is the current position. We are of the view that the right to participate in the management company should be reserved for a) owner occupiers and b) tenants (unless the latter have no wish to participate). In relation to tenants we would propose that the tenant's authority to vote should only apply in regard to normal expenditure on a day-to-day basis. It should not extend to matters of a capital nature which would have implications for payment to the sinking fund.

From a consumer perspective, the main objective should be to create a sense of responsibility for the space that they occupy and a sense of community, so that all residents in the complex have a say in what is going on around them, irrespective of their tenure. To borrow the title of the Dublin City Council report69, we believe that a critical ingredient for "successful apartment living" which can deliver "sustainable communities" is the requirement that all residents participate in the management company for their complex and take an interest in its activities, as they ultimately are the consumers of the benefits of a well run management company. Thus where we differ from the general consensus is not in relation to owner occupiers, but in relation to tenants who are after all contributing in part or in full towards the cost of the dwelling for the investor. This recommendation should be considered by the Company Law Review Group for incorporation in the Articles of Association of the management company.

---

[69] Successful Apartment Living – A Role for Local Authorities in Private Residential Management Companies, Evelyn Hanlon, Private Housing Unit, Dublin City Council, July 2006.

R14 Action: Department of Enterprise, Trade and Employment/Company Law Review Group

6.3.5 Company Law Review Group

In regard to the work underway by the Company Law Review Group we would support the recommendations of the Group, as set out in Section 4.3.

Recommendation 15

The issues addressed by the CLRG predominantly relate to company law aspects of management companies and the provisions proposed will improve the general understanding and operation of management companies. There are two important points made by the CLRG. The first is that the role of company law should be to provide structures for forms of incorporation. The second is that the regulation of management companies is a matter which should be the responsibility of an appropriate State department or regulatory body. We do not agree that a State department should be charged with regulating management companies. Accordingly, we recommend that the regulation of management companies should be a matter for the National Property Services Regulatory Authority and that any matters which the Regulator considers appropriate for a management company should be catered for in the Memorandum and Articles of Association of the company. We would see company law facilitating those requirements

R15 Action: NPSRA

6.3.6 Training for Officers of Management Companies

Recommendation 16

Professional bodies like the IPAV, the IAVI and the IPMFA should provide training courses for the officers of management companies, the costs of which would be covered by the management companies. The course content might include, for example, legal obligations on management companies, description of responsibilities of elected officers (chairperson, secretary, treasurer), where to get help (contact lists of accredited bodies), financial obligations and maintenance responsibilities.

R16 Action: Professional bodies like the IPAV, the IAVI and the IPMFA.

6.4 The Management Agent

6.4.1 An Association of Residential Management Agents

Recommendation 17

A professional body should be established representing residential management agents to create awareness amongst the property sector as well as national and local government of the role of professional management agents. This could be an independent body in its own right or could exist under the auspices of the Irish Property and Facilities Management Association (IPFMA). The association would be the Irish Association of Residential Management Agents (IARMA) and should mirror itself on the corresponding association in the UK called the Association of

Residential Management Agents (ARMA).70 The IARMA could work closely with the National Property Services Regulatory Authority to ensure the highest standards of property management are maintained by its members and that they deliver a professional service to their clients. This body could be set up well in advance of the NPSRA legislation.

R17 Action: The property management industry itself/ the NPSRA

6.4.2 Code of Practice

The Auctioneering/Estate Agency Review Group called for the regulatory authority to promote the operation of Codes of Ethics and Practice which would be adopted by all licence holders. The adoption of such a Code would, the Group maintained, deliver "higher levels of service quality throughout the profession". Such a code would be voluntary rather than mandatory and would allow the different professional bodies to differentiate themselves through quality of service offered by their members.

Recommendation 18

We welcome this recommendation and believe that such a code of practice should be drawn up by the new IARMA in association with the National Property Services Regulatory Authority (NPSRA) and the Society of Chartered Surveyors (SCS). All members should

[70] http://www.arma.org.uk

undertake to comply with it[71]. It should relate to residents' rights and management practice and impose minimum obligations on management agents. It should specifically deal with the following:

(a) Contractual duties as between the management agent and its clients;

(b) Financial duties such as keeping separate client accounts, maintaining detailed income and expenditure accounts for each client, and having appropriate professional indemnity insurance cover; and

(c) The standards of service which IARMA members agree to offer their clients in regard to, for example, dealing expeditiously with enquiries, keeping abreast of legislative changes and being aware of the terms of the lease for the particular complex in question; communicating regularly with clients; and settling disputes by mediating and negotiating with all relevant parties.

There needs to be some quality check for management agents which ensures that they act professionally at all times. The task of ensuring the IARMA members comply with the Code of Practice should fall under the remit of the new National Property Services Regulatory Authority.

[71] In the case of ARMA all of its members endorse, accept and undertake to comply with a Code of Practice relating to service charges published by the Royal Institution of Chartered Surveyors. The general terms of this code falls under the three headings provided above.

R18 Action: The Irish Association of Residential Management Agents (IARMA), NPSRA and the Society of Chartered Surveyors (SCS).

6.4.3 Professional and Educational Qualifications

Recommendation 19

The new association IARMA should develop, in conjunction with the National Property Services Regulatory Authority (NPSRA), a range of nationally recognised professional qualifications and training courses for managing agents involved in property management.

R19 Action: The Irish Association of Residential Management Agents (IARMA) and NPSRA.

6.5 Service Charges and Sinking Funds

6.5.1 Transparency in calculating the service charge

The calculation of service charges needs to be transparent so that consumers see the composition of their service charge, know what they are paying for and how the money is allocated in terms of day to day expenses for their complex, funds reserved for regular maintenance and repair, funds reserved for the sinking fund and the amount paid out in management fees.

There are concerns that the service charge quoted initially tends to be set at a low level by the developer to attract buyers. When the development is close to being fully occupied and as the management company comprising the owners is set up, the service

charge calculated by the management agent can be significantly higher.

Recommendation 20

Service charges should be determined by a professional quantity surveyor following consideration of the drawings, mechanical and electrical services, and the obligations regarding services generally set down in the lease between the buyer and the developer. The determination of service charges should be simple, reasonable and fair, in the interest of good estate management. Service charges should be levied by reference to floor area (on a square metre basis). In the case of mixed multi-unit developments comprising different dwelling types, it is recommended that where elements clearly and unquestionably are only attributed to the apartment block, they should be excluded from the calculation of the service charge for other units in the development, which should be costed separately. The initial service charge should be set by the developer, and the formula for apportioning it across the units should be written into the lease. In the case of a dispute over service charges, the Regulatory Authority should have the powers to deal with disputes in the case of owners. When there is no resolution, the dispute should be referred to the Court to justify the charges sought.

R20 Action: NPSRA and the Society of Chartered Surveyors (SCS).

Provision of Summary of Relevant Service Charge Costs

Recommendation 21

A consumer should be given, on demand, a written summary of costs incurred by the developer/management company and for which a charge is payable or has been demanded. This summary should specify the amount which the consumer is obliged to pay, the total service charges for the relevant building, the aggregate amount outstanding in the account; the credit of the owner both at the beginning and at the end of the accounting period. He should also be supplied with a certificate from a qualified accountant, that in his opinion a statement of account deals fairly with the matters with which it is required to deal, and is sufficiently supported by accounts, receipts, and other documents which have been provided to him. The consumer should be entitled to inspect such records upon the payment of a modest fee. The same rights should apply to the consumer in respect of insurance.

The Dublin City Council report called on DCC to develop an information booklet or website showing comparative studies of service charges and sinking fund provisions from scheme to scheme, to establish and provide information about average charges. It also recommended that the local authority should seek the cooperation of developers and the CIF in providing more comprehensive information on the sinking fund provision. We strongly support this recommendation and any measures which would help keep service charge/sinking fund fees at a reasonable level and extend the useful lives of residential buildings.

R21 Action: National Consumer Agency, NPSRA.

Recommendation 22

Management companies should be required to plan ahead for five years when calculating their service charges, and not ten as applies in Australia. This would be a sufficient period to protect and inform the consumer.

R22 Action: NPSRA

Recommendation 23

A sinking fund should be mandatory in all cases and this should be provided for in the lease. Such funds should be ring fenced from routine day to day expenditure. An annual appraisal of plant and equipment (e.g. lifts, roof) comprising the common areas or part thereof should be undertaken. The ‘sinking fund’ should be determined based on benchmarking similar buildings in regard to cost for painting, mechanical and electrical, fire system, age and lifespan of building, and a provision should be made every year to avoid a levy. The NPSRA should consult with the financial services regulator, IFSRA, in order to ensure the adequacy and management of the sinking fund as well as the adequacy of the insurance provision.

R23 Action: NPSRA and the Irish Financial Services Regulatory Authority (IFSRA).

Recommendation 24

The Fingal county manager in a report to Fingal County Council in April 2006 recommended that the means of calculation of the amount of the sinking fund ought to be set out in legislation and that the calculation in every instance be freely available to all owners. It

is recommended that both this concept together with the provision of information to the consumer, so that he/she understands what the service charge is and how it is assessed, why he/she pays it, what it covers, the existence of a sinking fund, and the importance that it be prudently and adequately maintained – should be introduced in the interest of transparency.

R24 Action: Department of Enterprise, Trade and Employment

6.6 Other Issues

6.6.1 Planners and the developer's obligations

Recommendation 25

It is recommended that planners should ensure that they monitor planning permissions and that the developer honours his obligations under the terms of his planning permission. In doing so account should be taken of the developer's track record when considering further applications for permission. Section 35 of the Planning and Development Act 2000 provides that the planning authority can refuse planning permission on the basis of past failures to comply. We have no information on the extent to which planning authorities invoke this provision but it provides a mechanism for ensuring that developers complete their developments in line with the conditions of their permission. The section states that if the planning authority forms the opinion that there is a real and substantial risk that the development in respect of which permission is sought would not be completed in accordance with such permission if granted, then planning

permission should not be granted72.

R25 Action: Department of Environment, Heritage and Local Government

[72] Section 35 (1) (b) (i) and (ii) Planning and Development Act 2000.

Appendices

Appendix 1 What should go into the calculation of the service charge?*

1 Insurance

2 Electricity

3 Lift Maintenance

Contract

Additional Call-outs

4 Common Area Cleaning

Internal common areas

External common areas

5 Carpet Shampooing

6 Window Cleaning

7 Gardens and Grounds Maintenance

Planting

Further Landscaping

8 Weekly Inspection Visits

9 Waste Removal

10 Building Repairs and Maintenance

Building Repairs and Maintenance

Painting Maintenance

Gates and Barrier Maintenance

Fire Detection System Maintenance

Fire Extinguisher Maintenance

AOV Fire Window Maintenance

Access System Maintenance

Intercomm System Maintenance

Emergency Services

Fountain Maintenance

Pest Control

11 Bank Charges

12 Fire Main

13 Car Clamping retaining fee

14 Sinking Fund

a Painting Fund (over 5 years)

b Carpet Fund (over 10 years)

c Overhaul of intercomm system 2006

d Upgrade of Gates; hinges and closers

f Ongoing Light Fitting Replacement

g	Extension of refuse house over X years
h	Unforeseen Emergency Fund
15	**Auditor's Fees**
16	**Filing Fee**
17	**Management Fees**
18	**Solicitor’s Fees (Handover) to date**
19	**Administration, Postage, AGM**
	Total Expenditure

* Based on an actual set of accounts for an apartment block comprising 248 apartment.

Appendix 2 Sample covering letter inviting tenders

Addressee
(Company or association's letterhead with contact address and phone/fax numbers and, if to be used, email address)

Date

Dear.....

Re: (Name and address of block)

We are in the process of reviewing the appointment of a management agent. Descriptions of the property and services required are enclosed (for guidance only) along with a questionnaire; 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 or the quality of the service provided will be considered as important as the cost).

If you would be interested in applying, could you 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 not later than (date). Subsequently we may wish to visit the offices of shortlisted 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

(Signature)
(Name and position)

Appendix 3 Property description checklist

(There may be other items you wish to add)

THE PROPERTY

Full address;

- Age of property and basic construction;
- Number and size of units;
- Number of adjacent blocks;
- Communal services provided.

OWNERSHIP

- Structure of management company and its obligations;
- Length of leases;
- Contents of leases (main covenants) or enclose a sample lease;
- Non-participating lessees;
- Tenants (i.e. those in occupation without long leases).

MANAGEMENT

- Structure of the board of the management company and their officers, and whether they are paid or volunteers;
- Financial year-end;

- Current management arrangements (are the current management agents proposing to tender?);
- Expected date of new appointment and details of any transitional period;
- Expected length of initial term of appointment;
- A copy of the existing management agent's contract or the intended future version;
- Staff employed (if any) and duties;
- Contractors employed and any present contracts in force;
- Current state of day-to-day finances (budgets and actual);
- Current state of any sinking fund;
- Arrears situation;
- Other known major problems.

Appendix 4 Checklist of possible services required from management agents

FINANCIAL

- Preparation of a reserve (sinking) fund plan relating to cyclical maintenance;
- Annual service charge estimation;
- Weekly/monthly payment of wages and other invoices;

- Regular billing and collection of service charges, including management fees;
- Provision of a periodic budget report of income and expenditure and cash flow;
- Annual preparation of draft accounts in anticipation of audit and subsequent liaison with the auditors;
- Preparation and distribution of the notices for the AGM/EGMs;
- Arrears collection management;
- Provision of advice on block insurance and any other appropriate cover(s).

RELATIONSHIP WITH RESIDENTS

- Attend to routine enquiries from residents (owners and tenants);
- Respond to solicitors' and property owners' enquiries regarding assignments and licences;
- Attendance at general meetings of residents (there are x per year held at ..... normally between x am/pm);
- Administration of insurance claims.

REPAIR AND MAINTENANCE MANAGEMENT

- Preparation of a cyclical maintenance and repair plan;

- Deal with day to day repairs and maintenance promptly and efficiently;
- Preparation of maintenance plans and contracts for plant and machinery;
- Advise on major contract work and the use of specialist professionals and contractors.

LEASE COMPLIANCE

- Ensure compliance with the terms of leases and policy agreed with the Board and where necessary, instruct solicitors in relation to breaches.

LEGAL STRATEGY AND CONTROL

- Formulate a safe and effective strategy within current legislation and in accordance with current best practice;
- Liaise with the company's solicitors;
- Maintain adequate record-keeping;
- Risk management and Health and Safety compliance;
- Company secretarial work (NB - not all management agents will be willing to offer this service).

STAFF MANAGEMENT

- Prepare job descriptions for employees and specifications for contractors and go to competitive tender;
- Supervise any employees and

regular contractors such as cleaners etc on behalf of the employer;

- Ensure appropriate training and compliance with Health and Safety and employment legislation.

BOARD SUPPORT

- Advise the Board on a suggested management policy; Attend Board Meetings and be responsible for producing minutes (there are x per year held at ..... normally between x am/pm);
- Provide a status report of financial, maintenance and legal matters;
- Report on significant residents' communications;
- Document management procedures and issues;
- Produce a periodic newsletter to residents and other circulars;
- Keep Board informed of status of agreed actions.

Appendix 5 Possible agent's experience and skills

Experience Required

- Proven record in rebuilding confidence and caring for residents;
- Working with a resident managed block;
- Proven record in arrears reduction;
- Cash flow management;
- Legal experience e.g. obtaining Counsel's advice; working effectively with solicitors; in-house legal skills;
- Successful record in management and reducing legal disputes;
- Operating a management company that will stay within agreed budgets.

Personal Skills Required

- Ability to formulate effective strategies to guide the Board or management company;
- Ability to provide written and oral reports and keep detailed records;
- Ability to discuss and agree policy with the Board or association;
- Efficient in following up agreed actions;

- Self-motivated to continually improve and maintain good management;
- Proactive problem-solver;
- Skilful communicator and negotiator, both written and verbal;
- Positive energy to inspire confidence and boost morale.

Appendix 6 Checklist of questions to ask prospective management 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.
- Will your fees carry VAT?
- How close are your offices to our property?
- How many years have you been in the property management business?
- How many staff in your company are involved with management?
- How many blocks 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.
- Please supply name and telephone number of chairman/secretary of the Management Companies in those blocks.
- What is your fee structure?
- How can you convince us that you can offer a quality service at a fair cost?

- How comprehensive a panel of contractors do you have?
- Do you charge a fee for contractor selection and/or a percentage of their charges:
    1. Contractors chosen by you?
    2. Contractors chosen by us?
- 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?
- What IT facilities do you have and what information can you record and keep updated? Are you registered under the Data Protection Act?
- 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 block?
- How do you deal with unpaid service charges - what procedures are in place to deal with non-paying lessees?
- How do you deal with lessees 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.

- What length of notice period do you require?
- List all those of your staff we are likely to liaise with and their qualifications.
- List any professional or trade bodies to which your firm belongs.
- Provide full details of your professional indemnity insurance.
- Provide proof of your financial probity
- Provide a copy of any standard contract you use.

It may be advisable to specify the costs of various administrative duties in advance.

Appendix 7 Consumer Questionnaire of Consumers / Owners

DKM Economic Consultants Study for National Consumer Agency on “Management Fees and Service Charges levied on Owners of Property in Multi-Unit Dwellings”

Our aim is to:

- establish the main issues for owners
- draft a consumer checklist for potential buyers

---

1 Where do you live: (postal code or county)

_____

2) What type of dwelling do you live in?

o Apartment block

o Gated development

o Housing estate

Age of building

_____

For how long have you been living there?

_____

3) Are you aware of the existence of a management company in your building, consisting of all owners of units?

o Yes o No

4) Are you a member of the management company of your development?

o Yes o No

5) If no: why not

_____

_____

_____

6) If yes: what are your experiences

_____

_____

_____

7) What are the problems in your development?

- o Level of service charge/management fee
- o Lack of transparency of decision making
- o Lack of financial accountability
- o Non-payment of charges
- o Neglectful management agent
- o Management company dominated by developer
- o No problems

Other (please specify): _____

_____

_____

8) How much did you pay in management fees and service charges

in 2006? € _____

When you bought the apartment/house (please indicate the year)

Year _____ : £ _____ or € _____

9) Is there a Sinking Fund? Yes _____ No _____

10) Are there any positive issues with respect to the management of your development?

_____

_____

_____

11) What would you have liked to know when you embarked on buying this property? What do you think potential buyers all over the country should look out for?

Before buying

_____

_____

_____

Upon taking up residence

_____

_____

_____

When trying to sell the property again

_____

_____

_____

12) Any other comments?

_____

_____

THANK YOU

Please be assured of absolute anonymity.

Please return by 26th May to annette.hughes@dkm.ie

Appendix 8 International Comparison of Principal Regulation of Management in Multi-Unit Dwellings

International Comparison of Principal Regulation of Management in Multi-Unit Dwellings

Country	*Regulation/Regulatory Body*	*Name of Management Body*	*Voting Rights*	*Management Agent Licence/Code of Practice*	*Consumer Information*
Germany	No regulatory body, regulated by property legislation	Owners Assembly	One vote per apartment, can be adapted by Owners Assembly	None	Tenants and owners associations offering on-line libraries, free legal aid Informative government web-sites
United Kingdom	self regulated/ARMA	Right to Manage (RTM) Company	Voting rights are weighted so that the original landlord cannot	Voluntary Code of Practice	Model shorthold tenancy agreement LEASE, a government funded agency

			dominate		gives free legal advice to leaseholders
Australia	Licensed/Institute of Strata Title Management (NSW)	Owners corporation	Voting rights can be weighted so that the developer cannot dominate	Yes	On line info, sample contracts. Owners corporation must issue a certificate which gives detailed information about their strata scheme to potential buyers
Ireland	**Currently none, NPRSA proposed**	**Management Company**	**Possible for developer to dominate for years after completion of complex**	**None**	**None**

Appendix 9 List of Groups/Individuals consulted during the course of this Assignment

Company Law Review Group

Estate Agency Review Group

Law Reform Commission

Private Residential Tenancies Board

Tramyard Residents Association

Aran Quay Management Company

Irish Property Buyer

Department of the Environment, Heritage and Local Government

O'Dwyer Property Management

Wyse Estate Agents

Edel Morgan, Irish Times

Michael Noonan

Fergus O'Dowd, TD

Trevor Sargent, TD

Kildare County Council

We also had cooperation from approximately 20 individuals who completed the Consumer Questionnaire and who wish to remain

anonymous.