

# Owner Forum - 30th October 2007

## Table of Contents

1. Ciarán McNamara – Speech
2. John – Legal
3. David – Company Accounts
4. Kevin – ODCE – Corporate Governance
5. Susan – Debt Collection
6. Eamon – Insurance
7. Deirdre – Service Charges
8. Deirdre – Management Agents
9. Sinking or Reserves Fund
10. Property Valuation
11. Snagging- Building Consultant
12. Anne – Fire Safety
13. James – Architect – Positive Aspects of Apartment Living

## Minutes

---

### Ciarán McNamara - Speech

Apartment living is becoming more and more of a reality in urban life today. The increase in the number of apartments in the city has been phenomenal in the last number of years. In the light of the city's ambition for more sustainable urban densities, it is also inevitable that apartments will become the dominant form of housing for Dublin in the future: an integral element in the revitalisation of our city.

Dublin City Council is committed to taking a lead in ensuring that apartment living becomes a successful housing form for a diverse range of people. We want to ensure that the environment in which apartment dwellers make their homes is both positive and pleasant.

Effective management of these complexes will be necessary for apartment developments to succeed and while we have minimal direct influence on the operation of private apartments, we are pleased in this instance to be providing a facilitative role in the development of this forum.

We have taken the lead in addressing concerns of apartment owners by commissioning research – Evelyn Hanlon's report on Successful Apartment living has received a remarkable response - providing mentoring, and now here tonight hosting a panel of experts – each one of them an apartment owner occupier - who will bring their specific expertise to bear on the issues raised here and hopefully provide some answers as well as exchanging ideas on best practice

I would also hope that another of the outcomes of tonight's meeting may be an independent apartment owners' forum which will actively represent your needs and issues. The response to this meeting has been huge, which in itself reflects the obvious need. But Dublin City Council doesn't propose to speak on your behalf. Our focus is to empower you to determine what your needs are and to help you seek out services that meet those specific needs.

Acquiring an understanding of all the issues is one of the key tasks here tonight. Tapping into the expertise around our panel of experts may be of some assistance to you in coming to terms with difficulties you are currently experiencing.

But we also need to be careful that we don't end up with a broad-brush criticism of all management companies. As in every walk of life there are some good and some not so good at what they do. Therefore having a real say in the operation of your own complexes going forward should be foremost on your agendas. And setting up an owners' forum will be the first step on that road.

## Minutes

---

### John - Legal

#### Slide:

- The common areas have not been vested – when should this occur?
- The developers are still Directors of the Management Company. We want to become Directors and have a say – how can we make this happen?
- Does a Residents Committee have any legal standing or do you have to become a Director to have a say?
- What legal papers do I need to copy? What information do they give me?

#### **The common areas have not been vested – when should this occur?**

Simply put, Common Areas are all those areas which are not your apartment i.e.: landings, lobbies, grounds etc. They should be handed over by the Developer when the last apartment has been sold. But unfortunately this often isn't a priority for them and they often don't do this. What will often be the case in apartment complexes is that the Management Company is looking after the common areas but doesn't own them.

#### **The developers are still Directors of the Management Company. We want to become Directors and have a say – how can we make this happen?**

You need to be a Director to have any real influence. There must be an AGM every year so ensure you go to that and prepare to propose yourself. It is becoming less of a problem recently that developers are remaining in control of complexes as they generally speaking do not want the hassle – they see being part of the Management Company as a headache, not a benefit.

#### **Does a Residents Committee have any legal standing or do you have to become a Director to have a say?**

Residents Committees do not have any legal standing. They can exert influence indirectly but not legally.

#### **What legal papers do I need to have a copy of? What information do they give me?**

You should obtain a copy of your lease. The lease states what agreements you entered into when you purchased your apartment. It states your service charge fee or apportionment and the interest rate applicable on overdue service charges. It covers topics such as car parking, advertising hoarding, keeping of pets, noise restrictions, balcony stipulations. It also states the conditions relating to the sinking fund. Although the lease can be a cumbersome and impenetrable document for most people without legal training it is a valuable reference document. You should also have copies of the land registry maps showing your apartment layout and your car parking space. You may have to contact your lending institution to obtain copies of your lease and land registry maps if your solicitor did not provide you with a copy when purchasing.

You should have copy of your membership certificate. It can come in useful for any disputes. If you do not have this ask your solicitor for it.

#### **Questions from the Floor**

Q: The common areas in our development are not vested but our developer went bust in 2003. Five people bought apartments since 2003 and it wasn't noticed by their solicitors. What do we do?

- A: This is a 'doomsday scenario' - you will need a declaration from the High Court transferring common areas to your Management Company.  
Corporate Governance expert added - It's important to note when engaging a solicitor - you do need a Company Law solicitor, not just an 'ordinary' solicitor - it's a specialist area.
- Q: Who do I ask for my membership certificate?  
A: Your solicitor should have it. When you bought the apartment it should have been given to them and they should have given it to you. It may have been sent with your title documents to the lending institution.
- Q: To what extent does a Management Company have a responsibility to give out membership certificates?  
A: Your solicitor is the first point of contact; it isn't the Management Agency's responsibility.
- Q: If a block is established for five years with no Directors or if the Directors are not resident at the apartments what is the status?  
A: Directors have to be elected onto the Board through an AGM. If you are not legally a member you cannot hold Directorship of the Company unless you were appointed director by the developer. You have to own a property within the development to be a Member or Owner.
- Q: If Directors act outside of their powers what can be done. In my development Directors are constructing an additional block in our common areas. A solicitor was employed and a member representative assured us the Directors were uninhibited. They are using maintenance fees to pay planning fees?  
A: The Directors obligation is to the company and they have to act in the company's best interest. If they are elected owner/occupiers it would require a special resolution to proceed with this course of action which means they need support from 75% of the members. It sounds like the company is not authorised to do this.
- Q: Our developer is still the Director of our Management Company and they still haven't relinquished control. The common areas are still in their name.  
A: If developer still owns common areas you are in a difficult position. You are entitled to a set of audited accounts. You should push for an AGM. Check your lease - you are a shareholder so you do have rights (but no power).
- Q: In our block the Developers are still Directors and we have a huge issue with noise. They're not enforcing rules. What's the comeback?  
A: So long as you are a member and they are a Director they have obligations to you. You can pursue them as a minority shareholder. The lease states the restrictions in relation to noise so you could write to the company secretary and request action to be taken. If you get no response you can report them to the ODCE for breach of their duty to the members (fiduciary duty).
- Q: How do you legally charge for anti-social behaviour?  
A: Directors are guardians and stewards of their Management Company. If they deem this charge valid it can legally be sanctioned.
- Q: Where the developer is currently a Director could he still develop land - what can be done if he is thinking of this?  
A: He will have to submit a planning application so you could object to that. But until common areas have vested you can't do much. You can complain to them and object to the planning application, provided the lease does not contain a clause about planning objections/appeals. In any event such a base may not be legally binding.
- Q: I live in a development that's 5 years old – our developers want to vest the common areas - what do you recommend we do before the AGM to prepare for this?  
A: Do a common areas snag. (See earlier response to vesting & snagging)

Q: Is developer/director entitled to own/rent apartment?

A: Yes the directors and developers may not rent out their units. There is a potential difficulty insofar as it may then be difficult to identify when "vesting of the common areas" should take place as it may be difficult to identify when the last unit is sold.

## Minutes

---

### David – Company Accounts

#### Slide

- Can you explain what an auditor does?
- Why is it important to have the accounts audited?
- When I receive my set of audited accounts what requires particular attention?
- What are 'qualified' accounts?
- There have been no accounts filed with the CRO for over two years – is a company not legally obliged to file accounts every year?

#### **Can you explain what an auditor does?**

An auditor is an independent evaluator of company accounts. He ensures the directors of the management company have prepared the accounts properly in accordance with the Companies Act. He also has to comment whether the directors have maintained proper books of account. He will prepare a short, one or two page report to confirm this. Over the last few year efforts have been made by the accountancy bodies to write these reports in plain english.

#### **Why is it important to have the accounts audited?**

Most management companies are required to have an independent audit by law. The Directors of management companies are responsible for preparing accounts and ensuring that all is in order and that sufficient information has been submitted. They must keep good records and an independent auditor is needed to verify that this is the case.

#### **When I receive my set of audited accounts what requires particular attention?**

A high debtors figure may indicate that management fees are not being collected. This can impact on the cash available to the company and its ability to pay for on-going services.

The bank account details are also important – the company should not be overdrawn.

High creditors figures signify that suppliers are not being paid which in turn could indicate there may be cash flow problems or that the level of management fees is too low.

Also check out current assets and current liabilities – if the latter is more than the former it could lead to insolvency.

There should also be a sinking fund.

#### **What are 'qualified' accounts?**

Qualified accounts is a term used when the auditor is prevented from forming an opinion on the accounts and the matter is or may be material to the financial statements.

It occurs generally where there is a limitation placed on the scope of the auditors' work or where there is a disagreement with the management regarding the accounts or disclosure of matters in the accounts.

The reason for qualification would normally be explained in the audit report of by way of a note to the accounts.

#### **There have been no accounts filed with the CRO for over two years – is a company not legally obliged to file accounts every year?**

Every company is required by law to file an annual return on its annual return date (ADR). This can be found at the website [www.cro.ie](http://www.cro.ie) - here you can check the status of a company and the date for filing. As a member or shareholder in your Management Company you are legally entitled to a copy of the company accounts.

### Questions from the Floor

Q: We have received notice of our AGM but didn't get a full set of accounts. The auditors report was not included in the accounts. We have now learned that the auditor has resigned. What should we do?

A: If accounts aren't sent out with the notice of the AGM you should complain to the Directors and if necessary report them to the CRO. If an auditor resigns he is required to file a notice in the Companies Office that he has resigned and if there are any matters that he wishes to bring to the notice of members or creditors. The directors are required to appoint an auditor and should circulate audited accounts including the auditors report.

Q: How detailed are company accounts generally and how detailed should they be?

A: If the company is limited by guarantee, as most management companies are, they must present to the members a full copy of the accounts. These accounts must contain sufficient details so that the readers of the accounts can understand them. The Companies Acts dictates the statutory disclosure requirements in company accounts.

## Minutes

---

---

### Kevin – ODCE – Corporate Governance

#### Slide

- There has never been an AGM held and I am an owner for the last 5 years. What should I do?
- I wanted to sell my apartment however I found out that my Management Company was struck off 6 months ago. What should I do?
- My Management Company was struck off 4 years ago. How do I go about having the company reinstated and how much roughly would it cost?

#### **There has never been an AGM held and I am an owner for the last 5 years. What should I do?**

You should have an AGM once a year - it's against the law not to. You must be informed that the meeting is taking place and given 21 days notice of it. You are entitled to see the company accounts before the meeting as well. If this has not happened you can complain to the Office of the Director of Corporate Enforcement (O.D.C.E.) who can ensure companies comply.

#### **I wanted to sell my apartment however I found out that my Management Company was struck off 6 months ago. What should I do?**

Your solicitor should not let this happen. You are going to have to pay a late filing penalty (€100). As it is within one year you can ask the Companies Registration Office to re-register the company.

You will need to include audited accounts etc with your request. But you need the Directors to do this, as a shareholder you don't have the power to do this.

You can also report the company if it's been struck off. If the Directors are reluctant to help it may be worth remembering that they personally can be banned from holding any other Directorships for five years. This can be especially effective when dealing with Developers who are Management Company Directors as it will affect their ability to conduct their own personal business (in which they are likely to be Board Directors).

#### **My Management Company was struck off 4 years ago. How do I go about having the company reinstated and how much roughly would it cost?**

This is a much more serious issue. After one year, you will have to go to the High Court to get your company registered. It's a messy and expensive process. Your apartment isn't sellable until this is resolved. You will need to audit all the years outstanding and sort out accounts. This will probably involve high audit fees, and legal fees. At least a five-figure sum will be needed to resolve this issue. Other company members may be unwilling to pursue this in which case you will need to resolve yourself and pay personally for all the costs. Log onto [www.cro.ie](http://www.cro.ie) to check to see if your company has been struck off.

Supplementary comment from Solicitor: Legal Costs for reinstating struck off Management Companies within 12 months are manageable. But for those struck off over one year - it's a lengthy process and costly. You cannot do it for less than €10k.

#### Questions from the Floor

Q: I need to file our accounts by March 2008, 2 out of 3 developer Directors have been sacked and Owners have now taken over the Board. But our Managing Agent won't release records until they get their fees paid. What should we do?

A: These records are your property – they do not belong to the Management Agent and therefore they cannot deny you access to them.

The solicitor added - If they refuse to hand them over, you need to engage a solicitor. You need accounts before you can do anything else so it's imperative you regain them. You own them and should control them.

Q: The Management Board in my development are a problem. They refused to tell us how many legally appointed Directors we have. What can we do?

A: The CRO has a register of all Company Directors. It might not be an accurate record but it's a start. You should know where the company registered office is. It's a legal requirement that a register of Directors is held at this address. So you could try that avenue. If you still have no joy, this company can be reported to the ODCE. [www.odce.ie](http://www.odce.ie)

## Minutes

---

---

### Susan – Debt Collection

Slide:

- Some owners have never paid their service charges and the company has no money for essential services like cleaning and refuse collection. What action can be taken against these owners and who should take it?
- If an owner goes to sell his apartment and there is a service charge debt can he leave the debt attached to the apartment for the next owner?

**Some owners have never paid their service charges and the company has no money for essential services like cleaning and refuse collection. What action can be taken against these owners and who should take it?**

Debt arises and it's a part of life. People often protest, because the Management Agent is spending money but not collecting. You should ensure that the management Agent stringently chases these people. Living in apartment development is living in partnership with your neighbours.

The management agent can institute legal proceedings to defaulters but it's difficult and lengthy. But there are some other tools that can be used - look to your lease. Usually interest can be charged - often up to 20% for late or non-payment of service charges.

You can also engage a debt collector and ensure you give clear instructions to this agent.

If essential services have broken down make sure your managing agent is actively working on collecting the outstanding service charges.

**If an owner goes to sell his apartment and there is a service charge debt can he leave the debt attached to the apartment for the next owner?**

The buyer's solicitor's job is to ensure they don't pay someone else's fees. The Management Agent should decline to pass over appropriate paperwork necessary for the completion of the sale unless the debt has been settled by the previous owner.

### Questions from the Floor

Q: Can you legally withhold service charge from an insurance claim.

A: If you can legally prove debt, yes.

Q: Is there a time period in place for developers who have not sold apartments to be liable for management fees?

A: If the developer is using the services he is liable for fees - whether the apartment is occupied or not.

Q: Can we sue on bad debts?

A: Proceedings have to be drafted correctly. You are acting in trust until it's vested to you. It's not clear cut.

## Minutes

---

---

### Eamon - Insurance

#### Slide:

- How do I find out whether the insurance policy is valid?
- Are there other types of insurance that our Management Company should have – or do we only need block policy insurance?
- I live in a house and am part of a Management Company – what insurance should I have?
- How can I be sure the complex is adequately insured? Could it be under or over insured?

#### **How do I find out whether the insurance policy is valid?**

As an apartment owner you are in possession of a very valuable property which is probably heavily mortgaged and which needs to be adequately and appropriately insured. In general it is the directors of the Management Company's responsibility to arrange the insurance covers for the development.

An apartment block insurance policy is generally arranged on the basis that each owner is an equal part shareholder in the policy. Therefore, each owner is fully entitled to know exactly what the policy covers in the same way as if it were their own house. Any queries regarding the policy cover should be directed to the development's Management Company, Managing Agent, Insurance Broker or Insurance Company as each of these parties will have a full copy of the insurance policy documentation. Do not be afraid to ask questions as it is **YOUR** insurance policy for which **YOU** pay an annual insurance premium.

When you bought your apartment your solicitor and Mortgage Company would have checked that there was an insurance policy in place covering the property and they would also have been provided with an Interest/Indemnity Letter confirming your interest had been noted as an owner and as an insured party under the policy. However, at the following renewal date how do you know as the owner that the policy has been renewed? I would recommend that this matter should be raised and the policy renewal position confirmed in the minutes of each annual general meeting.

#### **Are there other types of insurance that our Management Company should have – or do we only need block policy insurance?**

In addition to the block policy for the development the Management Company should have Management Liability (Directors & Officers Liability) cover and Engineering cover in place.

#### **I live in a house and am part of a Management Company – what insurance should I have?**

As a general rule houses are **not** covered by the block policy. However, insurance policies do vary so read and check your carefully. It should also be noted that houses can be covered by the block policy depending on the wording of the property purchase agreement.

#### **How can I be sure the complex is adequately insured? Could it be under or over insured?**

Buildings should be professionally valued on an "Insurance Reinstatement Basis" every 3/5 years and policy sums insured should be index-linked during the intervening years.

Block policy limits for Public Liability, Employers Liability and Management Liability (Directors & Officers Liability) should also be review on an annual basis.

### Questions from the Floor

Q: Aubrey Anderson - Member Director and Insurance Broker - Why is professional indemnity so important for Management Agents and other professional bodies?

A: Any company providing professional advice to the apartment owners, including Managing Agents, should have a Professional Indemnity policy in place to protect the owners against financial loss should the advice provided prove to be erroneous or flawed.

Q: Apartment owner – We have block insurance but what should I personally be covering myself for?

A: You should arrange a separate Contents policy to cover your personal possessions. In general, anything that is not fixed or fitted within the apartment should be insured by the Contents policy. For example, fitted kitchens, timber floors etc. are usually deemed to be structural and, in general, are covered by the block policy. However, everything else that you have put into the apartment i.e. carpets, curtains, white goods etc. should be covered by your Contents policy as these would **not** be covered by the block policy. Any specific queries in this regard should be addressed to your insurance broker or insurance company.

Q: Are tenants covered by Public Liability insurance?

A: Your legal liability to your tenant or any other third party, as an apartment owner, is covered by the Public Liability section of the block policy. The legal liability of your tenant is **not** covered by the block policy. If you are a landlord/investor you should let your tenants know the position and suggest to them that they contact an insurance broker or insurance company with a view to arranging to insure their own personal possessions and legal liability.

### Apartment Block Policy – Brief Cover Summary

**Buildings** - Covers damage caused by an Insured Peril, including Accidental Damage, to apartments including any commercial units and in some instances houses.

The block policy sum insured must be adequate to reinstate all buildings, garages, outbuildings, drives, patios, roadways, footpaths, walls, gates etc., etc. at the development. The property should be insured on an "Insurance Reinstatement Basis" and not on a "Market Value Basis" as this could be multiples of the rebuilding cost.

**Alternative Accommodation** - If an apartment is damaged and made uninhabitable by an insured cause or if access to the apartment is denied due to damage elsewhere within the block, the policy will pay the **reasonable** additional cost of **comparable** accommodation during the period necessary to restore the apartment to a habitable condition.

**Loss of Rent** - If an apartment is damaged and made uninhabitable by an insured cause or if access to the apartment is denied due to damage elsewhere within the block, the policy will pay the rent that the owner would have received during the period necessary to restore the apartment to a habitable condition.

**Contents of Common Areas** - Covers the contents **owned by the management company** and contained in the Apartment Block, Outbuildings or Garages at the development.

It should be noted that the block policy **does not** cover the owner's personal contents or the personal contents of any tenant.

**Public Liability** - Covers the legal liability of apartment owners for accidental bodily injury to any third party occurring in or about the apartment block including all common areas.

**Employers Liability** - Covers the legal liability of apartment owners for accidental bodily injury to any employee occurring in or about the apartment block including all common areas.

### **Other Policy Covers – Brief Cover Summary**

**Management Liability (Directors & Officers Liability)** - Directors of Management Committees, including Committee Members, can now be held personally liable for the failure to perform their fiduciary duties. Therefore they can be held personally liable for any damages and/or legal costs incurred putting their own personal assets at risk. Insurance cover is available to protect the Directors of Management Committees for their potential exposure to claims brought against them for any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, omission, breach of warranty of authority, libel, slander or any other act committed in the course of carrying out their Management Company activities.

Sources of potential claims would be as follows:

- Government departments may bring claims against officials for Health & Safety issues or Environmental issues.
- Apartment owners or groups of owners could sue for mismanagement or for breach of apartment development rules.
- Sub-committees or fellow committee member could sue for mismanagement.
- Creditors could sue in cases where there may be a dispute.
- Libel/Slander claims from other committee members or apartment owners.
- Bullying/Harassment claims by committee members or sub-committee members.
- Failure to keep proper books of accounts.
- Disputes between the Developer and Management Committee may lead to claims.
- Accusations of fraud (until proven in fact) may need to be defended.

We would recommend that apartment owners should not serve on management committee unless there is a Management Liability (Directors & Officers Liability) policy in place.

**Engineering** - Provides for the Statutory Inspection, by insurer's engineer, of Passenger Lifts in the development. Engineering cover may also be required to provide Sudden/Unforeseen Damage cover for Passenger Lifts or any other Electrical/Mechanical Plant of high value i.e. large water pumps etc. at the development.

**Motor** - This cover would be required if the development own any motor vehicles i.e. small vans, refuse trucks or forklifts.

### **Claims Examples**

Sample of some apartment block insurance claims currently being dealt with:

- Three fire claims estimated at €250,000 each including Alternative Accommodation/Loss of Rent.
- Tenant fell out of window to have a cigarette and fell 4 storeys - now paralysed.
- Child electrocuted and died when they came into contact with a live low level pedestrian light.
- Postman slipped on water in common area that was being cleaned and suffered back injury.
- Cleaning employee got stuck in Passenger Lift for a number of hours and suffered trauma.

### **Claims Reporting**

It is imperative that any loss/injury, which occurs at the development, be reported immediately to the development's insurance broker or insurance company.

All owners have a duty to keep insurance claims to a minimum as if the development has a poor claims experience premiums and policy claims excesses will increase.

### **Policy Conditions and exclusions**

All insurance policies contain conditions and exclusions some of which are as follows:

- Policy Claims Excess (Portion of claim that the owner must pay following a loss).
- Policy does not cover gradual deterioration, wear and tear etc. and should not be seen by owners as a maintenance contract.
- Owners are required repair any defect in their property, as soon as defect noticed, and to take all precautions to prevent further damage to the property.
- There is a policy condition requiring that the property is maintained in good repair and that all reasonable steps are taken to avoid damage.

### **Health & Safety**

In an apartment block development health and safety is everyone responsibility. If any owner notice a defect in the common areas, a problem with the fire alarm, fire doors not working correctly, syringes in common areas, anti-social behaviour etc. they should immediately report the matter to the management committee, managing agents or relevant authority.

### **Finally**

Should apartment owners not obtain satisfaction regarding any insurance matter or have cause for complaint they should contact either the Irish Insurance Federation or the Financial Regulator.

## Minutes

---

---

### Deirdre – Service Charges

#### Slide:

- I have stopped paying my service charges as I do not know where my money is going. What does it cover?
- The heating in my apartment has never worked properly so I have stopped paying my service charges. Is this valid?
- The service charges are increasing every year – what should I do?
- How are the yearly service charges calculated?

#### **I have stopped paying my service charges as I do not know where my money is going. What does it cover?**

Service charges are a new concept as most people are more familiar with living in houses rather than apartments. While you expect to pay towards gardening, insurance and cleaning and some basic maintenance, there are lots of other costs which people don't think about like booster pump maintenance, lift maintenance (including the cost of maintaining a telephone line in each lift) and fire safety systems which all cost a lot of money to maintain. The cost of vandalism, illegal dumping, sinking fund, repairs and renewals (light fittings etc) also have to be factored in. By paying your service charge you allow these services to be supplied. In addition you are legally bound to pay service charges, as you signed a document saying you would pay them when you bought the apartment.

#### **The heating in my apartment has never worked properly so I have stopped paying my service charges.**

Service charges are for the maintenance of common areas not for items within your apartment. So withholding funds because of a problem inside the flat or even a problem in the common area is not valid. Problems in the common area should be addressed through the directors of the company. Whereas you need to talk to the builder or developer about problems inside the flat, and if that does not work you might need to consider engaging a solicitor. However if there are problems in all the flats with heating or a similar issue you might organise with the other owners to come together to tackle the problem with the developer with or without a solicitor. But withholding service charges is not a solution in either case.

#### **The service charges are increasing every year – what should I do?**

Year one service charges are often kept artificially low to encourage sales. Charges tend to increase fairly dramatically in Year 2 and 3 although they do settle down after that and only should increase with inflation or if the level of services being provided changes. You should be provided with a detailed budget for the year when you receive an invoice for your service charges. This budget is an estimate of the costs for the coming year, and if all the service charges are not collected or paid there won't be sufficient money to pay for all the services that are outlined in the budget at the beginning of the financial year.

#### **How are the yearly service charges calculated?**

The Budget is prepared each year and the total amount is divided by the number of units. Your lease will outline how your service charges are computed or derived. In some cases the budget is split on the basis of square footage, in others it is a combination of the area, number of bedrooms and the floor level (1st, 2<sup>nd</sup>, penthouse). In some cases charges are divided equally between the number of units. Your managing agent should be able to explain how yours is divided. However I would suggest that you obtain a copy of your lease and familiarise yourself with how your service charges are divided between the apartments.

## Questions from the Floor

Q: Is there a deadline for paying your service charges and should window cleaning be included? I used to have a full year to pay but this year I'm being charged a 6% penalty if I don't pay by August.

A: Your lease will state how long you have to pay the service charges. I don't think it is reasonable to expect to have a full year to pay your service charges as the service providers such as gardeners, electricity provider, waste management, cleaners, and the insurance premium have to be paid and will not wait until the end of the year for payment.

Window cleaning is a controversial issue. In most cases the budget for the year will contain an amount for window cleaning however as the year progresses the priorities or demands on the money may alter e.g. your management company may need to undertake repairs due to vandalism. Repairs to the common areas will usually take precedence over window cleaning and therefore window cleaning may not take place because the money runs out.

Most leases contain a clause that allows management companies to charge or levy interest on service charges accounts that are in arrears. This is another reason that you should have a copy of your lease as the yearly interest rate will be stated in it. You should be aware that if you fail to pay your service charges on time the management company (of which you are a member) are usually allowed to charge interest, depending on what it says in the lease. In my experience I find that members when they are charged interest make sure that they pay on time from then on. The management company needs sufficient funds to be able to contract in services on your behalf and can only do this if there is money in the bank to pay for these services.

## Minutes

---

---

### Deirdre – Management Agents

**Slide:**

- I am not happy with my Managing Agent – the windows are never cleaned and parking is a free for all. What can I do?
- The residents in the apartment above me party every weekend – the Management Agent has done nothing.
- The Managing Agent never visits the complex. Every time I ring to report a fault I am told “he/she will get back to me”
- Who controls the funds for our Management Company and who signs the cheques?
- How do we know we are getting good value from our agent – can we change them?

**I am not happy with my Managing Agent – the windows are never cleaned and parking is a free for all. What can I do?**

The size of an apartment complex is a good indicator of whether you need to employ a managing agent to manage the complex. If your complex is small; self management can be a good option however large complexes need to employ a managing agent as there are a lot of complex issues to be handled and it can be time consuming for apartment owners to do all this work in a voluntary capacity. In most cases they would not have the full range of skills needed to manage the complex professionally.

The managing agent role is made easier if there is a group of owners who are willing to become involved in decision-making and in overseeing the work of the agent.

Usually it's up to the owner- occupier to become involved. A lack of order such as mentioned above; “free for all parking” would normally indicate that there is no residents committee involved and working collectively with the managing agent. Owners need to become involved and sit on the Residents Committee and become a director on the Board if they possibly can.

Within a complex there are a lot of different people with valuable skills and talents that can be put to use – so form a group to utilise them. Ask each person in the group to take on a particular task and try to match skill set to each responsibility. Learn and ask questions. Apartment living is very new so there is an enormous amount to learn.

Bring about change quickly so to show other residents that positive progress can be made - introduce recycling for example. Communicate with other residents and decide on realistic goals. As a Management Company you can vet and invite tenders from your service providers and this can make a huge impact on the value and quality of the services provided. And most of all be realistic with your goals.

**The residents in the apartment above me party every weekend – the Management Agent has done nothing**

Every owner has a lease which states what is acceptable or what is not. In addition to the lease terms it is usual in well run schemes for the members through the directors to agree a set of house rules. You need to make sure house rules are fully communicated and that landlords have a copy of them as well as the owner-occupiers. Sanctions (such as fines) should be imposed if house rules are broken. Be consistent and strong in your approach but work through a recognised residents committee and board of directors and take heart – if you do this it will work.

**The Managing Agent never visits the complex. Every time I ring to report a fault I am told ‘he/she will get back to me’**

You need to check whether there an agreed number of visits that your Managing Agent should make to your development - do they have agreed response times in their contract? If not you should contact your Board/Residents Committee to agree this.

Remember that Managing Agents are busy - they are usually looking after lots of developments as well as yours. Use their time constructively.

If something is constantly breaking down or isn't working you need to look at the reasons behind why and not just do a 'quick fix'. A quick fix may end up costing you a lot of money without addressing the underlying cause or educating to bring about a change of behaviour.

### **Who controls the funds for our Management Company and who signs the cheques?**

If the developers still control the board of directors by sitting on it as directors and there are no owners or very few owners on the board you have little say. But if you are Directors you should take control of the chequebook or set a limit on how much your managing agent may write a cheque for and how much the agent needs to get agreement to before signing a cheque. Remember it's your money and you should be able to control it. It's a good practice to have a system where two signatures are needed on each cheque – this ensures transparency and accountability. The budget for your development is probably very sizeable - why should you hand it over to someone else?

### **How do we know we are getting good value from our agent – can we change them?**

Your Managing Agent is like every other service provider - lift maintenance, gardener etc. If you are not happy your directors can tender your account. But don't change your agent too often - build up a relationship with them. Ensure they know everything they need to know about your development. You should give them the opportunity to address concerns communicate clear goals about improvements. Then if you are still not satisfied, act. But prepare before you act. Meet alternative providers before you change agents. And remember the cheapest quote won't always give you the best value.

### **Questions from the Floor**

Q: Can the Management Company dictate what blinds/curtains we have on windows?

A: *It depends on the lease. Some lease restrictions can be onerous. Developments differ sometimes consistency of window treatment improves the overall appearance of the property.*

Q: Does DCC have any authority in blocks in Dublin Docklands? There is a problem with anti-social behaviour with Social Welfare tenants.

A: *It depends on who the landlord is. If the problem is with private tenants and the managing agents cannot sort the problems out by approaching the landlord, then the agent or the company or the individual with the complaint can make a complaint to the Private Residential Tenancies Board who have the power to act. However if it is a social housing tenant the agent should complain to the landlord which can be the local authority or a voluntary housing association. If there is criminal activity the complaint should be made to the Gardai as well.*

Q: Anecdotally I have heard it is common practice that managing agents are given commission by suppliers. Is this true?

A: *Cannot comment on how managing agents conduct their business but you should check supplier contracts currently in place and it's always a good idea to seek tenders and directly negotiate services with suppliers The new property regulator Mr Tom Lynch will have the power to undertake investigations of this nature, his office is in Navan.*

Q: I am an Apartment Owner in a mixed development – there are 100 social housing units, and three to four hundred affordable housing units and the rest are private. Proxy votes are being used so we cannot effect proper change and approximately 300 people are not paying fees. How do you fix this?

A: If the developers are using proxy votes there is not much you can do until the common areas are vested and the owners have control of the company. In the case of the 100 social units the landlords are the members with the votes but it is the directors who are appointed to make the decisions for the members at board level. The affordable units should be owner occupied so they will be members with the same rights as other owners. The non-payment of service charges is a problem which needs to be addressed through improved debt collection procedures and by charging interest if the lease allows for accounts in arrears. It seems from what you describe that the owners

(including the landlords as investors) are not united and have not come together to form a strong community which shares the responsibilities and privileges of property ownership. There is clearly a need to improve regulation in apartment developments particularly in relation to the ongoing role of developers. The new regulator has this task but owners also need to come together to find commonly accepted solutions so that there is agreement about how they are going to live together in this new community including facing up to the responsibility of paying service charges, becoming part of resident committees and boards of directors, managing their agents properly, agreeing and obeying house rules and terms of the leases.

## Minutes

---

---

### Sinking or Reserves Fund

#### What is a Sinking or Reserves Fund?

Def 1: Amounts of funds and reserves built-up during the development life collected as part of the service charges, held in deposit account/s to support and fund long-term future maintenance projects and contingency items, utilized to protect the property structure and common areas against depreciation and maintain in good and serviceable condition.

Def 2: A sinking fund is a sum of money set aside to build up a fund to pay for major work, such as replacing a roof or door-entry system in a block of apartments. This means that when major work is carried out, the money collected over a period of time from different leaseholders will help pay for the work thus reducing the amount which needs to be collected or levied in the year the work is undertaken.

When new homes are built. It is possible to work out how much certain items would cost to replace, and how long they will last. This means that we know how much to collect each year, so we should have enough to cover some or all of the costs in the future.

#### When should a sinking fund be set up and how much should be put into it?

Ideally **set-up in Year 2 of the property life**, should not wait until common area transfer, Set-up a Sinking fund or Reserve Funds account to be **held in independent banking deposit account** under trust by Management Company Solicitor and handed over to Member Directors' control with Common Areas Transfer.

The assessment of annual contribution into sinking reserve fund/s should be carried out by Building Surveyor or Quantity Surveyor, collating all medium and long-term life-cycle requirements of the building's elements from manufacturers, suppliers and contractors, followed by obtaining cost estimates of 'current day' replacement or refurbishment tasks, including all materials, works access and project management. The Surveyor would enter the **cost figures and life-cycled elements into a plan spanning Year 2 to Year 60 of the buildings' life**, or for the design longevity of the development (whichever is greater). Apply a calculation that allows for inflation and/or economic growth year-on-year, as similar to long-term personal pensions planning, within a formula work in reverse **to calculate an annual minimum contribution that would be required to fund all the planned major maintenance works and tasks**. There is **NO set guide amount in euros that can be universally applied to all or any Apartment complexes or a single Apartment Unit**, the variables of maintenance planning long-term are overly dependant on the design life quality of the development and many key cost drivers that exist in each development (i.e. lifts, heating, lighting, roof types, structure types, vehicle parking, wall and floor finishes, glazing systems, windows, exterior skin panel systems, membrane roofs and many more)

#### What should it be used for? (Subject to the contents and clauses of the Head Lease)**Major**

**Maintenance Projects**, e.g. Roof Replacements, Electrical Rewiring, Lifts Refurbishments, Drives and Parking resurfacing, Drainage replacements, Replacement of infrastructure services, concrete spalling & windows replacement.

**Contingency Projects**: e.g. Items not covered by Insurance provisions, Insurance Policy Excesses for Common Areas protection, Structural failures, Ground water ingress, Tree Surgery and possible Major Damage repairs not covered by Insurance Policy.

**What should it not be used for?** (Subject to the contents and clauses of the Head Lease) Purchasing property.

- Building extensions of units to the development for gain or profit.
- Supporting non-payment of service charges.
- Day-to-Day minor maintenance.
- Equalizing Deficits and losses in the current year operating accounts.
- Substitute Insurance Policy cover for Common Areas and Buildings.
- Rebates of Service charges in surplus account years.
- Maintenance or refurbishment work/s to apartments or other residential units
- Insurance Policy Excesses for Unit Owners

**What is the impact if we do not have a sinking fund?** Property and development **will accumulate liabilities in long-term maintenance cost implications** that have not been provisioned for in funding reserves.

**Annual and random 'levies' will be imposed on all owners** as major maintenance projects arise, also any will result in contingencies. **immediate requirement for funds to be paid by all owners. (Even within a service charge year)**

**Without a healthy amount of money in a Sinking Fund or Maintenance Planning Reserve property will** potentially have **lower residual values of property** for the owners.

**Property investors looking for short-term gains in Apartments** will tend to exploit developments that have low or nil sinking funds by high turnover sales of units, thus escaping their contributions to a sinking/reserves fund within the annual service charges.

Whereas, astute **Longer-term property investors will tend to ensure that a sinking/reserves fund is kept healthy to protect their investment** and lessen the potential impact of ad-hoc levies being imposed to fund major maintenance projects during the life of the development.

More and more apartment buyers in the pre-owned purchasing market are **being advised to check the status of reserve and sinking funds within Management Companies.** A low or non-existent sinking fund will tend to alert potential buyers that the market value of the property can be reduced or negotiated down, to compensate for the risk of levies due to the lack of money in the sinking fund.

**Is it too late to set one up now? It is never too late to start a Sinking Fund or Reserve Fund;** Owners should assess the needs and develop a formula and long-term plan for service charge budget calculations.

**The annual contribution collectively for all members may initially appear to be high into a sinking or reserve fund,** but this should be treated as a way to protect the development's condition and the residual value of each Apartment or Residential Unit within the development.

The 'closing balance' **annual value of all sinking fund/reserve accounts stays with the development as a whole;** it cannot be divided or refunded owners upon sale or transfer of units within the property.

The Auditor in carrying out the annual summary of accounts presents a **'statement of account' for the standing reserves and current accounts of all banking for the Management Company.**

The Managing Agent can be requested to advise on **budget setting for the next service charge year, an amount can be budgeted for collection within the standard Service Charges** required from each property owner/member within the complex.

#### **Examples of Clauses in Head Leases of Management Companies**

The Management Company covenants:

**" To equalise the amount from year to year of the management service costs by charging in each year and carrying to a reserve fund or funds as it considers reasonable for future expenses liabilities or payments whether certain or contingent for depreciation."**

The Management Company covenants to:

**" Build up a reserve fund to meet contingencies to meet major repairs and capital replacement in respect of such matters referred to in this clause as to the lesser may deem appropriate."**

Reference Documents to support a Sinking Fund or Reserves Fund study or assessment: • Operational and Maintenances Manuals

- Design Statement or Certificate from Architect

- Practical Completion Date and Documentation
- Design or 'As Built' Drawings for the Development
- List and contacts for all Suppliers, Manufacturers and Contractors.
- List of Life Cycles of key elements and equipment within the development.
- Warranty Certificates for products, materials and equipment
- Home bond Certificate or other Warranty Scheme/s
- Conformance Statements (where applicable)
- Building/s Fire Certificate/s
- Fire equipment and systems commissioning certificates.
- Local Planning List of Conditions and Requirements as part of permission granted.
- Bonds and Assurances (where applicable)
- Commissioning Engineers Reports on Mechanical Equipment and Services. (i.e. Gas, Water, etc)
- Management Company Head Lease
- Management Company Memos and Arts
- List of any reported issues, problem or faults with the buildings or development.
- Insurance Claims list for past 5 years (only developments over 5+ years from completion)

### Questions from the Floor

Q: With regards to a sinking fund – can you give a guiding point or percentage of what it should be? Can it be reinvested elsewhere?

A: You need professional advice - cannot give a percentage or guide. Sinking fund cannot be there for 'profit or gain'. Check head lease clauses. You should not be able to re-invest. The money is held in the fund for everyone - it cannot be clawed back by individuals who are moving on.

Q: Our Management Agents supplied a budget for the forthcoming year which makes provision for a sinking fund. Is it part of the management fee?

A: Yes, it is. Sometimes it's called a long term maintenance. If you can't find it check the audited accounts as well and it may be highlighted there.

Q: Can a sinking fund be for non-members?

A: No, it's exclusively for the membership of the development and not for non-members

Q: Who decides what percentage goes into the sinking fund – is it the Management Agent or the Directors?

A: The Directors are responsible for setting the sinking fund budget each year however this should be produced based on professional advice as outlined above.

Q: In my development €100k of our sinking fund has been used for day to day expenses. The Management Agent has control over the cheque book?

A: No, the Board of Directors should be responsible. Someone should be accountable as this should not have happened. Go to the auditor and go to your Board of Directors for an explanation. If you get no joy there check your Head Lease as there may be some protection there.

## Minutes

---

---

### Property Valuation

**How can I be sure the complex is adequately insured? How do I know the reinstatement value of our development?**

Niall: You should try and revalue your property every year if possible. Index linked valuation is not always sufficient, you should ensure that the valuation you are basing your insurance policy on has professional merit and that the property has been inspected and valued appropriately. The reinstatement value will be stated on your block insurance policy schedule.

Sometimes the building can be over or under insured and as the block policy is based on the reinstatement value of the property this reinstatement value needs to be examined by the directors regularly. I know of one case where the reinstatement value was too high and when surveyed professionally the management company reduced their block insurance premium by over €10,000 that year. An understated reinstatement value of a development is also a concern as this means that your insurance policy would not adequately cover the rebuilding of the complex to its original state.

Contact the Society of Chartered Surveyors to obtain details of valuers. Fees can vary but make sure the valuer is well qualified. The cost of the valuation could be in the region of €2,000 to €20,000 depending on the development and the company engaged.

## Minutes

---

---

### Snagging- Building Consultant

**I live in a development that is 5 years old and our developer want to vest the common areas. What would you recommend the committee does ahead of the AGM, how should we prepare for vesting?**

A: The committee should establish the extent of the common areas with the developer or through the planning authority and should then seek three competitive quotations from suitably qualified professionals i.e. Chartered Building Surveyors. The quotations should be sought on a like-for-like basis and a standard letter should be issued to the companies to provide quotations. A sample proposal and quotation from a Building Surveyor for snagging is show below.

" Included in the proposal for the avoidance of confusion, are the following:

(A) An inspection of the external elevations, internal areas and common areas of the individual blocks including the following:

1. The common areas to the interior of the Blocks A, B & C (where applicable) including the outer face and frame of all the apartment doors. The service shafts in the common areas will be inspected where accessible.
2. The external areas of Blocks A, B, C etc.
3. Landscaped gardens, pavings, courtyard and hard standings in the proximity to all the blocks.
4. All elevations including the roofs where safe access is available to snag the roofs.
5. Boundary areas (a walk around inspection of the boundary and boundary structures).
6. Underground car parking facilities and ramp (were applicable).
7. The perimeter boundary walls and railings, both sides of the walls where applicable.
8. All bins stores and plant rooms.
9. The manholes and gullies. Your personnel on site will open and lift all manhole covers where required.

(B) To compile a snag list for the above areas on a floor by floor and area by area basis.

(C) To liaise with the contractor in agreeing the works, monitoring the works and reporting that all snags are completed.

- Items A & B – A fixed fee of €???? excluding VAT and disbursements.

- Item C – An hourly rate of €??? per hour. "

The report will not be a full building survey but a list of unfinished and defective items."

If hoists are needed to inspect the roofs a figure of at least €650.00 ex vat should be allowed for per day. Most companies will pay this initially and seek reimbursement via their invoice when the report is issued.

In this case the properties are a minimum of 5 years old therefore the level of wear and tear will have to be agreed with the developer i.e. scuff marks on walls, impact damage due to tenants moving in etc. There is no point putting items on the snag list, which the developer will not undertake due to wear and tear. The snag list without these items gives the list more credibility.

Also, the committee should firstly be in agreement with the developer that the snag list is being done and that he will attend to the items otherwise the committee will be out of pocket for the inspection.

The committee should ensure that they have the correct level of funds in place to pay the company carrying out the inspections.

## Minutes

---

---

### Anne – Fire Safety

- **The fire alarm in the hallway is always bleeping. I think my neighbours may have disconnected the sounder in their apartment – could this be related to the bleeping?**
- **Residents leave buggies/bikes outside their apartment doors. The underground car park is used as a dump for old furniture. What can I do?**
- **What fire safety systems are usually installed?**
- **Cars are parked everywhere at night – I don't think a fire tender could gain access if there was a fire. What can we do?**

**The fire alarm in the hallway is always bleeping. I think my neighbours may have disconnected the sounder in their apartment – could this be related to the bleeping?**

You should contact your Management Agent. If you have a Fire Alarm Panel this means that the Fire Alarm and Detection System is interlinked in your apartment block. If there is a fire in any apartment or in the common areas the Alarm will be sounded and you should evacuate immediately. Don't be tempted to tamper with the panel in your apartment or in common areas. Leave it to an expert.

**Residents leave buggies/bikes outside their apartment doors. The underground car park is used as a dump for old furniture. What can I do?**

Common areas should be free from combustible objects. Contact your Management Agent and ask them to contact the owners to resolve. Furniture should be properly disposed of. It is a real danger having furniture or dumped material in a car park. Again, contact your Management Agent to arrange for it to be removed. You should ensure signs are put up in the relevant areas notifying residents that this is an offence.

**What fire safety systems are usually installed?**

Most complexes now have a mixture of what are called active and passive systems.

Active systems include items such as detection alarms break glass units, emergency lighting etc. And most buildings should have automatically opening vents which are interlinked to the fire warning system.

Passive systems include items such as wall and floor constructions, fire doors etc.

It is very important that the fire doors and smoke seals are not tampered with, e.g. Fire doors should be kept closed at all times. It is important that all Active and Passive Fire Safety Measures are maintained over the life span of the building.

**Cars are parked everywhere at night – I don't think a fire tender could gain access if there was a fire. What can we do?**

The roads in most developments are specifically designed to give access to fire tenders or fire brigades. A width of 3.7metres is needed for fire engines to gain access. If the access roads are being blocked by parked cars the managing agent should be informed and perhaps clamping could be introduced to ensure that the access road is always available should a fire tender need access in the event of a fire. Access roads should be kept clear at all times.

## Questions from the Floor

Q: The fire escape at the back of my building is locked by the Management Company. What should I do?

A: Ring the Managing Agent and demand it be unlocked immediately.

Q: I got an indication from a fire officer that our doors are not satisfactory. It has been impossible to get a clearer statement from him and I'm finding it very difficult to get quotes. The development is 25 years old so I need clarification about what needs to be updated to meet regulations. I am worried that if I call the Fire Officer in again he will compel us to do this before we have a chance to look at our options. Can you help?

A: You can employ a fire safety consultant who can inspect your property and advise your management company. You will not be under any obligation to take their advice but this way at least you have the information you need. The consultant can also give you information about suppliers of fire doors.

Q: Our property still hasn't been vested and the Developers are still Directors. Recently the fire alarm went off and a malfunction with the system caused or doors to lock (rather than unlock). Our Management Agent said it's the Management Company problem. We reported this to DCC. But can someone tell me who is accountable and who can we go to with such a serious breach of fire safety?

A: As the common areas have not been vested and the Developer are the directors it is the responsibility of the Developer to put right any fault arising in the fire safety system. They maybe reluctant to however the Fire Department can check they have addressed this problem and enforce them to right the situation.

Q: We have an issue with fire escapes for an older building. What legislation is there - should we be proactive in complying with this and are there any directives we should know about?

A: Under Fire Services Act 2003 'all reasonable measures should be taken to ensure fire safety procedures are covered'. There should also be a reasonable care clause in your insurance.

Q: How do you stop people tampering with Break Glass Units?

A: Clear plastic covers are available that cover the break glass units which may help to act as a deterrent to their activating the fire alarm system.

Q: There was a fire in an apartment in my block and the window was damaged. Who is responsible for having this fixed?

A: On the basis that's it's structural (glass), it can be covered by block insurance.

Q: Our Fire emergency buttons are not working – what should we do?

A: Complain to Dublin City Council. You will have to give them access to view

Q: Does Dublin City Council offer any financial assistance to engage a fire safety consultant?

A: Dublin Fire Brigade are the enforcement section and you have to adhere to their recommendations. Consultants are independent and are engaged at your own expense

Q: Can you clarify the situation regard smoking in common areas? What is covered by law?

A: Under the Health and Safety and Welfare at Work Act smoking is banned and therefore it's banned from common areas.

## Minutes

---

### James – Architect – Positive Aspects of Apartment Living

**Slide:**

- Close to all amenities, libraries, parks etc
- Close to work – no long commute time
- Close to family and friends
- Design is improving
- Community spirit develops when you become involved and bring other people along with you
- Opportunity to help and assist other apartment owners who are at the early stages of the learning curve

In Dublin there were lots of new developers in the 90's who were on a learning curve. The City Council have started with basic minimum standards and are encouraging family occupation and setting appropriate standards. This covers the size of apartments but doesn't address facilities, environment etc. We do need standards set for this as well.

If you are looking to buy in a development find out if the developer is holding onto any apartments - if he is he'll be likely to have a good long term standard. As a general rule, long-term maintenance isn't usually high on developer's lists.

Only 50% of dwellings bought are accompanied by the necessary certification which is a disappointing figure. An architect might not be able to confirm on his final checks to ensure all design requirements are met (e.g.: wiring). Final Inspection Only Certification is not good enough as it's difficult to check the construction process.

You should get your new apartment snagged by an architect.

Registration for all architects will be in place by next summer.

Looking at the problem of building regulation changes, it would be well worth it if you have an older building to get a proper assessment done. Sometimes, blocks have to be completely redeveloped. Sometimes it's easier to knock down and start again – we can help owners to do this.

### **Questions from the floor**

Q: My new apartment isn't in compliance with building regulations (insulation). Who is responsible?

A: Your Solicitor should have cleared( E.- not sure what James means here) Cert of Compliance. If Architect signed it you should bring it up with him. Otherwise you can get an independent architect to evaluate and then go to law.