

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, 2nd, 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.

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 underlining 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 cheque book 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.