



Common Repair, Common Sense

**A detailed guide to the management
of tenements in Scotland**



Second edition

About Consumer Focus Scotland

Consumer Focus Scotland started work in October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland. Consumer Focus Scotland works to secure a fair deal for consumers in both private markets and public services, by promoting fairer markets, greater value for money, and improved customer service.

While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or shoppers in a supermarket.

We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

Consumer Focus Scotland
Royal Exchange House
100 Queen Street
Glasgow G1 3DN

Phone **0141 226 5261**

Fax **0141 221 0731**

www.consumerfocus-scotland.org.uk

Published by Consumer Focus Scotland
September 2009

We can often make our publications available in braille or large print, on audio tape or computer disk. Please contact us for details.

Acknowledgements

Consumer Focus Scotland acknowledges the contribution of Douglas Robertson, University of Stirling, who wrote the predecessor publication **We are all responsible** (Scottish Executive, 2001). Both the first edition of **Common Repair, Common Sense** and this edition include elements of the original publication.

Derek Manson-Smith wrote the first edition of **Common Repair, Common Sense**. The revisions for this second edition were carried out by Derek Manson-Smith and Ann Flint.

The first edition was published by HomePoint within Communities Scotland. Following the closure of Communities Scotland the copyright transferred to Consumer Focus Scotland.

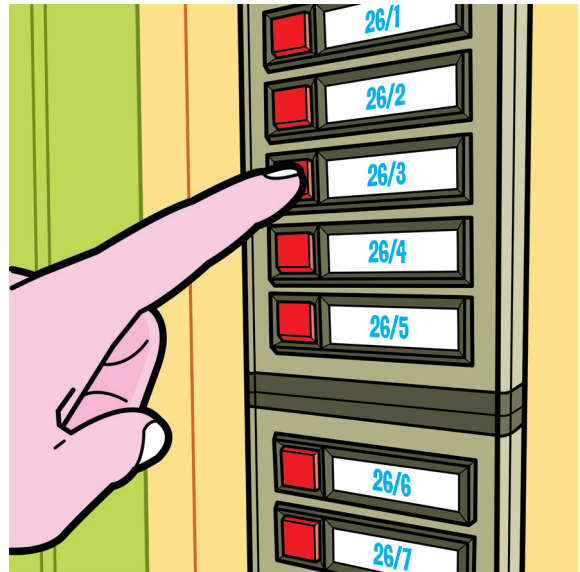
We are grateful to the Scottish Government and the members of the private sector group of the Scottish Housing Best Value Network for their advice in drafting this second edition.

Contents

	<i>page</i>
1	Introduction 4
1.1	What is a tenement? 4
1.2	Property maintenance – who is responsible? 4
1.3	What are my responsibilities for maintaining the common parts or areas? 5
1.4	Legislation that also applies to owners of detached and semi-detached houses 5
1.5	Jointly owned flats and tenements where owners have multiple properties 5
2	Rights and responsibilities of tenement flat owners 7
2.1	Responsibilities of all tenement flat owners 7
2.2	Where do I find details of my rights and responsibilities? 7
2.3	Title deeds 8
2.4	How can I change conditions in my title deeds? 9
2.5	The Tenement Management Scheme 11
2.6	Scheme property 11
2.7	Sharing the costs of repairs and maintenance 12
2.8	Other costs that are shared 12
2.9	What is maintenance? 13
2.10	Taking scheme decisions 13
2.11	Emergency work 15
3	Managing the tenement 16
3.1	How can we best manage maintenance and repairs? 16
3.2	Talking to and meeting with your neighbours 16
3.3	Finding landlords and absentee owners 17
3.4	Property managers and factors 17
3.5	Managing the building yourselves 20
3.6	Common insurance 21
4	Managing repairs and building maintenance 22
4.1	Day-to-day domestic tasks 22
4.2	Checking your building 22
4.3	Establishing a good building maintenance schedule 23
4.4	Major repairs 24
4.5	Access for maintenance, repairs and services 25
4.6	Keeping your tenement in a reasonable state of repair 25
4.7	Finding a reliable contractor 26

Contents cont'd

	<i>page</i>
5	Paying for repairs 27
5.1	Maintenance accounts 27
5.2	Help from your local council 28
5.3	Financial support and advice 29
6	Compulsory repairs and maintenance powers, uncooperative owners and disputes 30
6.1	Owners' obligations 30
6.2	Dealing with disagreements over decisions 31
6.3	Refusal to pay 31
6.4	Owners unwilling to pay 31
6.5	What is mediation? 32
6.6	Help from the council where one owner can't pay – 'missing shares' 32
6.7	Work notice 33
6.8	Maintenance orders 33
6.9	Maintenance plans 34
6.10	How will the council get its money back from owners? 35
6.11	Dealing with neighbourhood housing problems 35
7	Buying and selling 36
7.1	What happens when an owner sells and works are agreed or underway? 36
7.2	What happens to a maintenance account or building maintenance fund when an owner sells? 36
7.3	The Home Report 37
8	Where can we get technical and legal advice? 39
8.1	Technical advice 39
8.2	Legal advice 39
9	Contacts 40
10	Glossary 44
Appendix 1	Title Deed check list 46
Appendix 2	What to look for in choosing a new property manager 49
Appendix 3	What to do to check your building 51



Introduction

Note of caution

While this guide tells you about your responsibilities and rights under the law, it does not give a full explanation of the law or tell you about the specific obligations that apply to your own property. That information can only be found in your title deeds. For guidance on your title deeds, ask your solicitor.

1.1 What is a tenement?

While a tenement has traditionally been thought of as a residential sandstone or granite building of three or four stories, it has a broader legal definition.

A tenement is a building comprising two or more related flats that are divided from one another horizontally.

Therefore, large houses that have been converted into flats, high-rise blocks, four-in-a-block and modern apartment blocks are tenements. So too are blocks of flats with commercial properties in them, such as ground floor shops, and office buildings, if they also have two or more flats. A 'flat', in this definition, does not have to be residential and can be on more than one floor.

1.2 Property maintenance – who is responsible?

New laws introduced by the Scottish Government place a firm responsibility on owners to actively maintain their property:

- The Tenements (Scotland) Act 2004 provided a structure for maintenance and management of tenements where there is a gap in title deeds.
- The Housing (Scotland) Act 2006 introduced a further change of culture by giving powers to councils to make owners carry out maintenance for which they are responsible.

1.3 What are my responsibilities for maintaining the common parts or areas?

While you are solely responsible for the upkeep of your own flat or house, parts of the tenement building or estate are normally the joint responsibility of all the owners whose title deeds say they have a right of common property. In a tenement this will typically include parts such as the common stairs or lifts. In an estate, access roads are typically common property.

As well as your responsibilities for maintenance, you are prohibited from:

- **doing anything that would interfere with any part of the building that provides support or shelter.** This would include knocking down internal walls without replacing the structural support or knocking holes in walls for boiler ventilation and not making the hole properly weather proof; and
- **doing anything that would interfere with the natural light of any part of the building.**

If you own a tenement flat, you also have a positive responsibility to maintain those parts in which you have a 'common interest'. These include the parts that provide support and shelter for the building as a whole, such as the external walls and normally the roof. Your fellow owners can enforce this responsibility.

1.4 Legislation that also applies to owners of detached or semi-detached houses

Some of the recent legislation applies not only to tenement flats but also to detached or semi-detached houses. The following sections in this guide will be helpful to those of you who own houses:

- **Change your title deeds (see 2.4)**
- **Power to dismiss a property manager (see 3.4)**
- **Work notices (see 6.7)**
- **Maintenance orders (see 6.8)**
- **Maintenance plans (see 6.9)**
- **Council power to recover costs (see 6.10)**
- **Housing Renewal Areas (see 6.11)**
- **Scheme of assistance for owners (see 5.2)**
- **The Home Report (see 7.3)**

If you are buying a flat, or a house in a modern housing estate, you should make sure that your solicitor explains the provisions of the title deeds so that you are clear about the obligations, rights and responsibilities you will be accepting. If the tenement or the estate is professionally managed, your solicitor should ask the property manager for information about common maintenance obligations and their costs. On modern estates, owners may have obligations to pay for the upkeep of landscaping and amenity areas, and access roads where they have not been taken over by the council.

1.5 Jointly owned flats and tenements where owners have multiple properties

If you share ownership of your flat with one or more people, then any of you can, without the agreement of the others, do whatever is necessary to fulfil your responsibilities for tenement maintenance.

You and the co-owners of your flat are jointly and separately liable for any maintenance costs. That means that if you and your co-owners don't pay your share of costs, your fellow owners could take action through the sheriff court against all or any one of you.

Under the Tenement Management Scheme (see 2.5), when decisions are taken about maintenance or common repairs, your flat has one vote. If you share ownership of your flat with one or more people, then any one of you can use the vote. However, if you cannot agree how to vote then the person or persons

with majority ownership decide. If the vote is equally split, no vote is cast at all.

It is possible for owners to have more than one vote if they own more than one flat in the tenement. This is common in blocks where either current or previous owners have bought their flat under the Right to Buy but local authorities or housing associations retain ownership of other properties. In these cases, it is possible that the local authority or the housing association owns the majority of the properties in the tenement which has implications for taking decisions as they have a majority for voting purposes.



2 Rights and responsibilities of tenement flat owners

2.1 Responsibilities of all tenement flat owners

You have the following responsibilities, regardless of what your title deeds say:

- to have building insurance;
- to maintain important parts of the tenement; and
- not to interfere with parts of the building if that reduces support or shelter offered.

These are covered in more detail elsewhere in this guide (see 1.3 and 3.6).

Other rules and procedures that apply to all owners, regardless of what their title deeds say are:

- what happens where flats are in joint ownership (see 1.5);
- dispute resolution (see 6.5);
- what happens to repairs in progress when a flat is sold (see 7.1);
- maintenance accounts (see 5.1); and
- how repairs should be commissioned (see Section 4).

2.2 Where do I find details of my rights and responsibilities?

You will find details of your rights and responsibilities in:

1. your title deeds;
2. the Tenement Management Scheme, where your title deeds have gaps or defects (see 2.5).

2.3 Title deeds

Your title deeds normally tell you about your responsibilities for the common property. They define the location of your flat (for example, top floor, left flat) and tell you about your rights and responsibilities for your own flat and your shared responsibilities for the tenement. They may also say who owns the common parts and tell you about the owners' obligations to manage and maintain them.

Your title deeds will include deeds that tell you about the management of the tenement. The most common is the deed called disposition that was drawn up at the time of the first sale, and the deed of conditions. The disposition or the deed of conditions may:

- **tell you about your responsibilities for the management and maintenance of the common parts;**
- **tell you how decisions about them should be taken;**
- **tell you how costs are to be allocated between owners;**
- **provide arrangements for paying for maintenance works and services.**

Your title deeds will normally be registered in the Land Register of Scotland. Sometimes a deed will be recorded in the Register of Sasines, for example if a property that is not already in the Land Register is transferred to you but not for a financial consideration. Sometimes, for example if there are new real burdens in the title deeds, registration is in both registers. Both registers are maintained by the Registers of Scotland. To find out about the registration of your title, or if you have any questions about your title, contact the Registers of Scotland (see Section 9).

While the Register of Sasines simply records the deeds as they were originally drawn up, property details in the Land Register are set out in a Land Certificate.

The Land Certificate contains:

- **a Title Sheet, with a plan linking the property to an Ordnance Survey (OS) based map;**
- **a Property Section, which describes the property and the rights that go with it;**
- **a Proprietor Section, which gives details of the current owner;**
- **a Charges Section, which shows details of securities that affect the property, for example, a mortgage; and**
- **a Burdens Section, which gives details of the obligations affecting the property taken from the original deeds.**

2.3.1 Where can I get a copy of my deeds?

If you don't have a copy of your deeds, you can get a copy from:

- **the Registers of Scotland (the current charge for a 'quick copy' of a Land Certificate is under £5, and for a copy of a Sasine Register deed is under £10);**
- **the solicitor who did the conveyance when you bought your flat, if you don't have a mortgage; or**
- **your mortgage lender.**

Your solicitor or building society may charge a fee for a copy of your title deeds. If you are buying a property, you should ask for a copy of your title deeds or Land Certificate at the time.

Your Land Certificate or title deeds and any associated deed of conditions may tell you all you need to know about your responsibilities for the common parts of the tenement. However, in older buildings, they are not always clear about what is included in the common parts or how decisions about their maintenance and repair should be taken and carried out.

If there are gaps or defects in your title deeds you should use the provisions in the Tenement Management Scheme (see 2.5).

Reading your title deeds

While the language in title deeds is often difficult and complex, your title deeds are important and you should make efforts to read and understand them. Your deeds will tell you about previous owners, mineral rights, the exact location of the property and the other properties whose owners are responsible for common repairs – in some cases, the deeds can cover more than one tenement block.

Locate the parts of your deeds that tell you what owners are responsible for individually and in common, and how decisions should be made. A check list is provided at the end of this guide to help you make a comparison between what is in your deeds and what is covered in the Tenement Management Scheme and other parts of the Tenements (Scotland) Act 2004.

If neither you nor your neighbours can make sense of things, you should contact one of the sources of advice given in Section 9.

Title deeds for new developments may be based on the Tenement Management Scheme. However, developers are free to vary them to suit their own requirements, so you should still check your title deeds for gaps and defects.

2.4 How can I change conditions in my title deeds?

The conditions in your title deeds are obligations – known as real burdens – that go with the ownership of your flat. When you bought your flat, you accepted the conditions and when you sell it, they will remain with the flat. They are put in the title deeds to control the use of the flats in the tenement, for example, by banning letting or business use, or to ensure that the owners maintain or contribute to the maintenance of the common parts.

The conditions in your title deeds will most likely also be in the title deeds of your fellow owners. While you may see a condition on shares of repair costs as unfair, your fellow owners may see it as a benefit. Similarly, your neighbour may see a condition banning business use or a restriction to single-family occupancy as an unwanted burden, while you see it as a benefit. Therefore, if you want to remove or change a condition, you have to consider the effects on your fellow owners.

The process for changing your deeds depends on how many of the owners in a tenement agree to the change:

- **If all of you agree, then it is relatively straightforward. A solicitor will be able to draw up the required deed and the Lands Tribunal for Scotland will certify the change.**
- **If the majority of you agree that you want a condition in your title deeds changed, again the deed is drawn up and sent to the Lands Tribunal for Scotland but those against the change can formally object to the Lands Tribunal for Scotland if they wish. The tribunal will consider the change and make a decision.**
- **If 25% of the owners wish to make a change, they can apply to the Lands Tribunal for Scotland for a decision.**

If you act alone, or in the minority, and your fellow owners object, it will be much more difficult to persuade the Lands Tribunal for Scotland for Scotland to change the condition.

If you wish to make changes to your title deeds, you will need to use a solicitor to do so. Any changes to your title deeds, and the title deeds of any of your fellow owners who are affected by the change, must

be registered in the Land Register of Scotland or the Register of Sasines. You will be charged fees by the solicitor for preparing the changes and by the Registers of Scotland for registering them. A solicitor, Registers of Scotland or local advice centre, can give you information and advice (see Section 9).

There are three possible methods for changing a condition in your title deeds:

- **obtaining a Deed of Discharge or Variation;**
- **applying to the Lands Tribunal for Scotland to change or remove a condition; or**
- **issuing a Notice of Termination.**

These methods are outlined below. Your solicitor will tell you how to go about it and how much it will cost.

2.4.1 Obtaining a Deed of Discharge or Variation

You can obtain a deed of discharge to remove or vary conditions. This can affect the burdens and impose new burdens on other properties in the tenement. While it is not essential for all owners to sign the deed, you must tell them about it and give them an opportunity to object.

2.4.2 Applying to the Lands Tribunal for Scotland to change or remove a condition

You can ask the Lands Tribunal for Scotland to remove or change a condition if more than 25% of the owners in the tenement wish this. That means that you do not need the consent of the majority of owners, which in practice may be difficult to achieve in large developments. If any of your fellow owners who benefit from the condition oppose your application, the tribunal will consider its merits before deciding whether to grant it. If your application is unopposed, it will be granted, depending on the condition. It will not be granted without consideration, even if it is unopposed, if it applies to:

- **a facility, for example, an obligation to maintain or contribute to the maintenance of a common facility, such as the common parts of the tenement; or**
- **a service, for example, an obligation to allow water pipes or electric cables to pass through your flat to other flats.**

2.4.3 Issuing a Notice of Termination

If a condition is more than 100 years old, you can send your fellow owners who benefit from the condition a notice of termination. If none of them does anything for eight weeks, you can apply to the Lands Tribunal for Scotland to have the termination registered in the Land Register or the Register of Sasines. During those eight weeks, any of your fellow owners can apply to the Lands Tribunal for Scotland to have the condition renewed. You cannot use this method to remove or change a condition that applies to a facility or a service (see 2.4.2).

If you buy your flat from an owner who has sent his or her fellow owners a notice of termination but the process has not been completed, you can take it over.

If you get notice that someone is planning to get the title deeds changed and you don't like what is planned, act immediately. Consult a solicitor. You only have a few weeks to act.

2.5 The Tenement Management Scheme

The Tenement Management Scheme is a default scheme that can be used where your title deeds have gaps or defects. You and your fellow owners can use the different sections of the scheme to make up for gaps or defects but otherwise you must follow your title deeds.

If there are gaps in your title deeds (such as them not saying how decisions should be taken, or not describing all the common parts) or defects (such as allocating shares of costs that do not add up to 100%) then the Tenement Management Scheme will fill the gaps and correct the defects.

If your title deeds have procedures for taking decisions and the same procedures apply to each flat, then the title provisions apply, even if you do not like what they say.

The Tenement Management Scheme is part of the Tenements (Scotland) Act 2004. It does not affect your ownership of your flat.

2.5.1 When does the Tenement Management Scheme apply?

The Tenement Management Scheme is a fall-back model for the management and maintenance of the parts of your tenement for which you and your fellow owners have a common responsibility and a shared interest.

If your title deeds say how any of the matters covered by the scheme should be dealt with, then you do what your title deeds say you should. If any matter is not covered by your title deeds, then the relevant part of the scheme will apply to that matter.

You may find that, while your title deeds provide for procedures covered by the Tenement Management Scheme, they are less comprehensive. In that case, you must follow your title deeds but you and your fellow owners could improve the procedures in your title deeds by changing the conditions in them (see 2.4).

2.5.2 What does the Tenement Management Scheme cover?

The Tenement Management Scheme covers:

- scheme property – the parts that everyone with common property rights is required to maintain (see 2.6);
- parts that are the responsibility of only those who have use of them (see 2.6);
- how the costs of repairs and maintenance are to be shared (see 2.7 and 2.8);
- what is maintenance? (see 2.9);
- management costs that are shared between common owners (see 2.7);
- access to carry out repairs (see 4.5);
- ‘Scheme decisions’ – any decisions taken by owners as a group about scheme property in accordance with the title deeds or the Tenement Management Scheme (see 2.10).

2.6 Scheme property

Scheme property is:

- any part of the tenement that your **title deeds** say is the common property of two or more owners, for example, the close or stair;

- any other parts of the tenement that your **title deeds** say must be maintained by two or more owners, for example, the gutters and downpipes. Some title deeds will identify parts are the property of only those who have use of them, for example, drainpipes serving flats on one side of the building;
- the ground on which your tenement is built which is known as the solum (but not the back court or front garden);
- the foundations;
- the external walls;
- its roof, including the rafters and any structure supporting the roof;
- the part of a gable wall that is part of the tenement building;
- any wall, beam or column that is load-bearing.

The following are not scheme property but are the property of individual owners:

- parts such as doors and windows, skylights, vents or other openings that serve only one flat;
- any chimney stack or flue that serves only one flat;
- any extension that serves only one flat.

Some parts are the common property only of those who have use of them, for example:

- drainpipes serving flats on one side of the building only;
- any other parts of the tenement that your title deeds say must be maintained by two or more owners (perhaps garden ground).

2.7 Sharing the costs of repairs and maintenance

Owners become responsible for costs incurred from the point when the scheme decision is made or emergency work commissioned.

Your title deeds usually tell you how costs are to be shared between owners and, where they do, they must be followed. However, if your title deeds have gaps (for example, they don't say anything on costs) or defects (for example, the cost allocation does not add up to 100%), then you should follow the Tenement Management Scheme.

Under the Tenement Management Scheme, costs are shared **equally** between all owners. However, there are two exceptions:

- i. where the work involves maintenance or repair of a part that does not serve the whole tenement, for example, the downpipe serving only half the flats or where the title deeds say that only some owners are responsible, such as for the stairs where there is a main door flat with no access. In this case only the responsible owners are liable for the costs and they pay equal shares of these costs; and
- ii. where the floor area of the largest flat is more than one and a half times that of the smallest flat. In this case, liability for repair costs for scheme property is determined by the floor area of each flat. The cost of measuring the floor areas to work this out is shared equally.

2.8 Other costs that are shared

Tenement flat owners are also liable to pay equal shares for the following (regardless of flat size):

- inspection for maintenance;
- payments to a manager to carry out inspections and maintenance;

- the running costs of scheme property that benefit more than one flat;
- management fees and costs;
- premiums for the insurance of common parts;
- the costs of calculating the floor area of any flat, where this is necessary to decide how costs should be shared;
- the costs of installing a door-entry system that can be controlled from each flat;
- any other costs relating to the management of scheme property.

2.9 What is maintenance?

Many of the legal rights and responsibilities for tenement flat owners apply only when 'maintenance' is being carried out.

Maintenance is legally defined as:

- repairs and replacement;
- cleaning;
- painting and other routine works;
- gardening;
- the day-to-day running of the tenement;
- the reinstatement of part (but not most) of the tenement building.

Maintenance does not include alteration, demolition or improvement, unless the improvement is inherently part of maintenance work. For example, if you need to replace the main door, choosing one with a more suitable specification or adding an improved modern lock is likely to be counted as maintenance, rather than improvement. Maintenance also excludes internal decorative repair of areas that are not owned in common, unless they are incidental to the repair of common parts.

2.10 Taking scheme decisions

Like other parts of the Tenement Management Scheme, the requirements for notifying owners and voting only apply if:

- your title deeds do not say how you should take decisions; or
- they are inconsistent, e.g. between the title deeds of different owners.

It is important that the correct procedures are followed because:

- An owner can appeal against the actions of fellow owners or refuse to pay because of a procedural irregularity.
- Owners will also need to show that they have followed procedures if they wish to apply to their local council to pay any missing shares (see 6.6).

2.10.1 What matters need scheme decisions?

You and your fellow owners must take proper scheme decisions on the following:

- carrying out maintenance to scheme property;
- having scheme property inspected so that you can decide whether and how much maintenance is needed;

- appointing or dismissing a manager to manage the tenement;
- authorising a manager to carry out inspections and arrange maintenance up to a particular cost;
- arranging a common insurance policy for the reinstatement value of the tenement;
- deciding that an owner does not have to pay any or all of his or her share of a scheme cost;
- authorising any maintenance of scheme property already carried out by one owner;
- installing for the first time or replacing a door-entry system controlled from each flat, even if it is not to replace an existing system; and
- changing or cancelling any previous decision.

2.10.2 How are group or scheme decisions made?

The key points to note about how scheme decisions are to be made are:

- Each flat has one vote (see 1.5).
- A decision can be passed by a simple majority of owners.
- An owner can appoint someone else to make decisions on his or her behalf.
- A properly made decision is binding on all owners (but there are some exceptions – see 2.10.6).
- Decisions can be made either at a meeting called with 48 hour's notice or by taking a poll of all the individual owners that can practically be contacted (see 2.10.4).
- Owners must be properly notified (see 2.10.4).
- There are procedures to cover what happens if owners do not agree with a decision (see 2.10.6).
- Scheme decisions are binding on you and your fellow owners and your successors as owners.

2.10.3 Voting on scheme decisions

If the Tenement Management Scheme applies, scheme decisions can be taken by a simple majority of owners. Decisions about improvements, for example, installing a communal satellite dish, must be unanimous unless your title deeds set out voting procedures for them. If your deeds set out procedures for voting, then you must follow your deeds.

Your flat has one vote and that can be used by you or someone appointed by you. However, you can only vote on decisions about maintenance if you are responsible for the costs of maintenance of that part of the tenement.

Any obligation arising from the scheme or as a result of a scheme decision can be enforced through the courts by any owner or anyone authorised by an owner such as the property manager (see Section 6).

2.10.4 Giving proper notice to owners

All owners entitled to vote on a scheme decision must be given at least 48 hours' notice in writing of a meeting. Notices must be written and can be posted, faxed or emailed to the owner or their agent. If an owner is not contactable or not known, then the notice can be posted through the door of the flat, addressed to 'The Owner'. With a scheme decision, notice starts from the day of posting or sending.

2.10.5 Notification of decisions

When a scheme decision was made at a meeting you attended, you will have known about it at the time. However, if the decision was made at a meeting when you were not present, you must be told about it

as soon as possible by someone nominated at the meeting to do so. If there was no meeting, the person who proposed the decision must tell you and your fellow owners.

The methods that can be used to notify owners of a decision are the same as those for meetings (see 2.10.4).

2.10.6 Are scheme decisions binding on all owners?

Scheme decisions are binding on you and all your fellow owners (even if they did not agree). Decisions are also binding on anyone who acquires your flat (your successors as owners). An owner who did not agree has 28 days to appeal through the sheriff court. Any obligation arising from the scheme or as a result of a scheme decision can be enforced through the courts by any owner or anyone authorised by an owner. However before you consider legal action you should consider alternative ways of resolving the problem (see Section 6).

2.11 Emergency work

Owners also have powers to deal with emergencies.

Emergency work is:

- **work that would prevent damage to any part of the tenement; or**
- **work required in the interests of health and safety that cannot wait for a scheme decision to be taken.**

There is no legal definition of what constitutes an emergency. Few repairs are likely to be this urgent, however, and you should follow proper procedures for commissioning repairs if possible. Otherwise, in the event of a dispute over such work, you and your fellow owners would have to be able to justify what you have done or you may be found to have acted without following the proper procedures and find it difficult to recover costs. If you are unable to justify that it was an emergency you may find yourselves paying for the cost of the work.

If you think that the work required might be emergency work, you can contact the council for information and advice.

However, if the work is indeed an emergency, you or any other owner can instruct work without a scheme decision. You will all be liable for the costs in the same way that you are liable for maintenance costs (see 2.7).



3 Managing the tenement

3.1 How can we best manage maintenance and repairs?

To ensure that the common parts of your building are properly maintained, you and your neighbours need to fully participate in collective decision-making so that you can decide how routine and one-off maintenance and repairs should be carried out.

Many tenement flat owners find it useful to have a property manager to provide technical expertise and to handle the administration and the tensions that can arise between owners and often these arrangements are satisfactory. Other tenements are self-managed with owners carrying out the management work themselves.

This section tells you what you can do to manage your tenement better and to get more out of your property manager if you employ one. Whichever method of management you use, establishing good relationships and regular communications with your neighbours will make all management much simpler and more effective.

3.2 Talking to and meeting with your neighbours

You should have regular communications with your neighbours about tenement management, common maintenance and repairs. While this can be done through individual contact, email or letters, regular meetings will avoid matters that should be attended to being allowed to drift. Meetings give people a chance to discuss issues, to iron out misunderstandings and come up with better decisions.

If you have a property manager (see 3.4) your meetings will provide an opportunity to discuss with the manager common matters that need attention. Research shows that property management arrangements usually work much better if there is an owners' association or some effective arrangement for communication amongst owners.

3.2.1 Arranging a good meeting

Meetings can be formal, with an agreed set of rules, or informal, with the business preceding a social event. Whichever style you use, you must keep a clear record of decisions taken at meetings.

- Whoever organises the meeting should tell people what the meeting will be about so that they have time to prepare. If you plan to take decisions about commissioning repairs, changing your property manager or other important issues that may need a vote of the owners, they must be given proper notice (see 2.10.4.).
- You should use the meeting to discuss why you are trying to do things and the benefits for you all. Try to find answers to all the questions that come up.
- If it looks as though it is going to be a tough meeting, you may need an outsider to help. Your property manager or the local council may be able to provide you advice on how to hold the meeting.
- If you take a decision, write down what people have agreed to, ask them to sign it and give them a copy. People who were not at a meeting where a decision was made should be told what was decided as soon as possible. The methods that can be used to notify absent owners of a decision are the same as those for meetings (see 2.10.4).

3.2.2 Individual contact

Sometimes, it may not be possible to arrange a meeting but decisions still need to be taken. If this is the case, whoever wants a decision taken can contact the other owners individually by calling round the doors, telephoning or emailing. All owners should be contacted unless it is impractical because, for example, an owner is absent. Decisions must be recorded and fellow owners notified of the result immediately.

If you have to leave a notice at a flat for an owner who is not otherwise contactable, it is good practice to get the delivery witnessed or sent by registered post (as proof of postage).

3.3 Finding landlords and absentee owners

The Registers of Scotland (see Section 9) can tell you who your fellow owners are and even the price they paid for their homes. The address given for the owner will be his or her address at the time he or she bought the flat. If that person no longer lives there, ask the Registers of Scotland to search for other properties owned by the same person. One of these is likely to be his or her home address. You will need to pay a small fee for each area searched.

You can search the public register at www.landlordregistrationscotland.gov.uk. If you do not find what you are looking for, please contact the council where the property is located, or where you think the person or company should be registered, for further assistance.

3.4 Property managers and factors

Property management is the management of the common or shared property by an agent appointed by or responsible to the owners. The agent is called the property manager or sometimes the 'factor'.

While most property managers are private businesses, some councils and housing associations provide property management services. This might be because the property was bought from a council or housing association under the Right to Buy and they have carried on providing property management services. Alternatively, the local council or housing association might own other properties in the tenement and have decided to take on property management. There are special rules for appointing and dismissing property managers in these cases (see 3.4.5).

You are not normally obliged to have a property manager (see 3.4.5 for special cases). However, if you have one, or decide to appoint one, your manager should provide some or all of the following services, depending on what you are willing to pay for:

- **Routine maintenance:** Your manager should arrange for an annual inspection of the property and take appropriate action to deal with any problems identified by the inspection. In doing so, the manager

must organise and manage reliable and capable building maintenance contractors, which may involve coordinating the services of several building trades.

- **One-off works:** For work outwith a routine contract, your manager will obtain estimates for the work and send them to you. If a majority of you agree to accept the estimate, the manager will normally instruct the work to start. As the contractor will expect the manager to hold funds for the work, you will be asked to pay your share of the estimated project costs before the work starts, unless the manager already holds sufficient funds from a float or sinking fund (see 3.4.3).
- **Additional services:** Your manager can provide additional services for a slightly larger fee, for example, organising and administering common insurance for the building, managing maintenance contracts for lifts, boilers and gardening services, or directly employing and supervising on-site staff, such as caretakers.

3.4.1 Working with your property manager

As with any relationship, good communications is the key. If you have a property manager, or decide to appoint one, the manager must be given clear instructions about any decisions you take about common maintenance and repairs. You may find it helpful to nominate one person to communicate directly with the manager.

You should also have an arrangement for telling the manager about any communal defect that comes to any owner's attention or about unsatisfactory repairs or services, so that they can be put right without delay.

Property managers are normally willing to meet owners regularly as a group or individually. If you decide to form an owners' association, your property manager may be able to help with setting it up and assist in its day-to-day administration.

Given their professional expertise, a property manager is often called on for advice on maintenance, repairs and improvements to common property. They will also deal with routine enquiries from owners, solicitors and other professionals with an interest in the property.

If you sell your flat, you should tell the property manager, so that they can contact the new owner.

If you have any complaints about unsatisfactory work, your manager should investigate them and tell you what action has been taken to resolve them.

3.4.2 How can we be sure about the quality of the service?

Private property managers that are members of Property Managers Association Scotland are expected to adhere to a code of practice laid down by their representative body. If you decide to appoint, or change, a property manager, the association can give you details of local members. You can also find details of the Association's members and the code of practice on its website (see Section 9).

Councils and registered social landlords (housing associations) that provide property management services for properties that have been bought under the Right-to-Buy are required to meet specific standards (set by the Scottish Housing Regulator, see Section 9 for contact details) and have customer care policies that tell you what you can expect and how they will put things right if standards are not met. Some registered social landlords will also offer a factoring service to owners in their area of operation.

The Scottish Government is developing a national accreditation scheme for property managers, which will be based on a comprehensive set of standards. For further information, or to find out if this is in place, please contact the Scottish Government (see Section 9 for contact details).

3.4.3 Paying for property management services

Usually, you will be charged a monthly, quarterly or half-yearly management fee and you may be asked to pay into a float when you first move in. The float is to ensure that the manager has sufficient funds in hand to pay for regular costs. You may also be asked to make regular payments to a sinking or building maintenance fund. The fund contributes to future maintenance and repair costs and helps to avoid the need for a large one-off payment.

When routine work has been carried out, the manager will check the contractor's invoices and, once approved, pay them from the float or sinking fund or bill you individually, depending on your arrangements. Where work is non-routine, the manager may ask you for payment before the contractor starts work. The manager will also collect common charges and report any arrears to the owners. The manager must keep accurate records on work carried out on your property and provide you with details of payments made.

To help maintain a good working relationship with your property manager, you should make sure the manager is paid on time.

3.4.4 Complaints

If you have any complaints about unsatisfactory work by a contractor, your manager should investigate them and tell you what action has been taken to resolve them.

If you have a complaint about the property manager, it is advisable to write to them and give them a chance to put things right. If you get a poor or no response, ask about the complaints procedure. It is not advisable to withhold payment as your property manager may assume that you are simply a bad payer and take action to recover the debt rather than deal with the management issue. It may be safer to pay a disputed bill and ask for a refund on your next bill. If you get no satisfaction, talk with your fellow owners about changing your property manager.

3.4.5 What is the procedure for appointing or dismissing a manager or factor?

If your title deeds contain procedures for appointing or dismissing a property manager, these conditions can be over-ridden as long as a majority of two-thirds of the owners agree. If your title deeds do not provide a procedure for appointing or dismissing a factor at all, a simple majority of owners can decide to appoint, or dismiss, a property manager. Like other majority decisions, the minority of owners are still bound by the decision but can appeal the decision in specific circumstances (see 6.2.2).

If you decide to dismiss your manager, be aware that the manager's contract may specify a period of notice. You should also check the contract to see whether the float, or a portion of it, is to be returned following dismissal of a property manager.

For those who wish to change their property manager, a checklist at the end of this guide suggests what to look for in choosing a new one (see Appendix 2).

There are special arrangements in three situations:

- i. New developments:** If your flat is in a new development, the developer may retain the right to appoint a manager for up to five years after the property is built. If the developer chooses to retain this right, the owners cannot appoint or dismiss a manager until the five years is up, or until the last property in the development is sold, whichever is the sooner.
- ii. Sheltered housing:** If your flat is in a sheltered housing development, the developer may retain the right to appoint a manager for up to three years. If the developer chooses to retain this right, the owners cannot appoint or dismiss a manager until the three years is up, or until the last property in the development is sold, whichever is the sooner.

- iii. Buildings managed by a council or housing association: In the case of housing bought through the Right-to-Buy, the council or housing association has the right to appoint a manager for 30 years or until two-thirds of the properties in the tenement have been sold. They can appoint themselves as manager.

We live in a four-in-a-block terrace. Three of us own our flats and a council tenant occupies the fourth. What are the responsibilities of the owners for repairs to the common parts of the building?

Your title deeds should set out the responsibilities for repairs of common parts. The council may retain responsibility for managing and maintaining the common parts, and collect payment for that service as the property manager. However, a two-thirds majority of you (including Right-to-Buy owners, other owners and the council as owner) can decide to dismiss the council property management service and either appoint a new manager or manage the property yourselves. Similar arrangements will apply to a property where at least one of the flats is owned by a registered social landlord.

There can be advantages in using a council or registered social landlord's property management service, as it will often employ a clerk of works to inspect and manage the maintenance work and may also employ its own tradespeople. If the council does not retain responsibility, you will have to agree maintenance work with your neighbours and the council or registered social landlord.

3.5 Managing the building yourselves

If you don't have a property manager, or if you decide to dismiss your property manager (see 3.4.5), you will be responsible for managing the building yourselves.

Self-factoring can involve a lot of work but can work well if you:

- have a good owners' association (see below);
- all make regular payments to a maintenance account;
- don't leave it all to one person; and
- get regular professional help to survey the building and supervise repairs.

Forming an owners' association

An owners' association can help to generate a sense of community between neighbours, act for you and your neighbours in organising common maintenance and repairs, or help your property manager to function more effectively. Research has shown that tenements with owners' associations are more successful in managing and maintaining their buildings whether they use a property manager or self-factor.

An association will work best if all the owners agree:

- how the building will be managed;
 - how tasks will be organised;
 - how meetings will be arranged and managed;
 - how decisions will be recorded; and
 - how agreed works will be paid for.
- Edinburgh City Council provides helpful advice on setting up an owner's association and some draft constitutions on its website. Go to www.edinburgh.gov.uk and type 'owners associations' into the search function.

3.6 Common insurance

3.6.1 Insurance – your obligations

You are responsible for insuring your own flat and your share of the common property so that you can meet your obligations to rebuild the tenement. However, in reality, you are not adequately insured unless both you and all your neighbours are adequately insured. There have been cases where tenements have been badly damaged by fire and rebuilding work was held up because one owner did not have adequate insurance.

To help protect owners, the Tenements (Scotland) Act 2004 gives owners the right to ask their fellow owners to provide evidence that they are insured to the full reinstatement value with premiums fully paid. A request for this information must be made in writing and the owner to whom the request is made must produce the evidence within 14 days. If one owner is not properly insured, any of the other owners can enforce this obligation in the courts. You should seek legal advice if you want to enforce this.

The reinstatement value is the cost of rebuilding the tenement rather than just its market value, which may be far less. If you are under-insured, your whole claim will be reduced in proportion to the amount you fall short, even if you are not claiming the full amount for which you are insured.

You can use a combination of common and individual insurance policies to meet your obligations or you could have one insurance policy to cover the whole block. This can be considerably cheaper but you need to be confident that every owner will pay his or her share of the premium. Not all insurance companies will provide this type of insurance and, if you have a mortgage, you may also need to negotiate the use of alternative insurance provision with your lender. Property managers or factors are often able to arrange buildings insurance for a block for which they are responsible.

3.6.2 Paying for insurance

If your title deeds say you must have common insurance, you must each contribute in the proportions stated in your title deeds. If the deeds don't apportion shares, then you must contribute equally to the premium.

If your title deeds don't say specifically what common insurance cover you should have, then you and your fellow owners can use the provisions in the Tenement Management Scheme (see 2.5 -2.10) to take out a common insurance policy for the reinstatement value of the tenement. You should decide among yourselves the fair contribution of each owner to the premium.



4 Managing repairs and building maintenance

Typical management activities include day-to-day domestic tasks, regular maintenance and major repairs. Your title deeds or the Tenement Management Scheme will say how you should go about organising the tasks covered in this section. These are the sorts of things a property manager would be expected to deal with.

4.1 Day-to-day domestic tasks

Day-to-day running of the tenement includes the following:

- stair cleaning;
- maintenance of the back court, back green or common garden area;
- maintenance of communal door-entry systems;
- stair lighting, which may need specific management arrangements;
- maintenance of a communal television aerial.

These, and all maintenance tasks, are covered by the Tenement Management Scheme (see 2.5 – 2.10). If these matters are causing friction in your tenement, you can use the provisions of the Tenement Management Scheme or your title deeds to change arrangements, for instance, to buy in stair-cleaning services.

In larger modern tenement schemes, caretakers, wardens and concierge management may be employed and management fees can be significant.

4.2 Checking your building

Regular inspections followed by prompt remedial action will reduce the costs of minor and major repairs. Delaying remedial work will only exacerbate a problem and increase the cost of the eventual repair work.

It is good practice to get a contractor to check your roof every year and carry out preventative works such as cleaning gutters and fixing any loose slates. However, in some properties it may be difficult to convince owners to take even these simple steps. In these circumstances, it may be worth doing your own checks to convince your fellow owners to take action (see Appendix 3).

4.2.1 Taking action

If you find anything that concerns you, call a meeting and get your fellow owners to agree to get some quotes for a full professional survey, and proper technical help.

A professional surveyor will carry out many of the tasks suggested above and will bring an experienced eye to the problem. He or she will generally inspect the roof space, and report on its state, identify any problems and what action is required to remedy them and, if you ask for it, provide an estimate of the costs.

If you or your surveyor spot signs of problems on a neighbouring building, consider whether you might get together with the owners and do a joint programme of work that might be cheaper all round.

Where can we get a survey of the common parts of our building and estimates for putting right any problems?

A surveyor or architect will do a survey for you and some may be prepared to give you a rough estimate for any repair work the report identifies. Your local council may also provide this service.

You should ask for someone who has the relevant experience. The surveyor will bring more experienced eyes to the problem than you can and be able to spot something you have missed. On the other hand, he or she can also bring a lot of comfort by checking cracks and assessing if they are signs of seasonal building movement or old problems that do not require urgent or costly repairs.

You should ask for photographs of any problems. These, with the report and drawings, will help the owners understand the extent of problems and help the contractors in costing and carrying out any resulting work.

For traditional tenement buildings a comprehensive survey such as this will take between four and eight hours to carry out, plus time to produce the report. Large, new build apartment blocks may take longer to survey. You should ask two or three firms for a quote for the work.

However, if the works identified are straightforward, such as defective gutters, you could contact your property manager, if you have one, or ask the surveyor or architect for a short specification so that you can get competitive quotes for the work.

If work that needs to be done is complex or extensive and you want an accurate estimate, a basic structural survey may not provide enough information. For this, you should ask a quantity surveyor to prepare an elemental cost breakdown of any work that needs to be done. You could also ask the surveyor or architect to give you a written quote to act as your consultant for the works. The fee will depend on the size of the contract and will either be a percentage of the contract value or be calculated on time spent on the work.

4.3 Establishing a good building maintenance schedule

The table below shows what you should be doing to maintain your property and how often. This is only a general guide and relates mostly to traditional tenement buildings. You may need a detailed survey to establish the actual condition and to tell you where you are in the life cycle of the various elements of your building.

A good building maintenance schedule

Every year	<ul style="list-style-type: none">• gutter cleaning• roof inspection and minor reactive repairs• flashings on the roof and cupolas• check and repair harling and render cement coatings• chimney heads and chimney pots• TV aerials and fixings
Every 3–5 years	<ul style="list-style-type: none">• door entry systems• external paint work on doors, windows, gutters and downpipes
Every 5–10 years	<ul style="list-style-type: none">• stair painting• mastic around windows• repair felt roof coverings
Every 10–15 years	<ul style="list-style-type: none">• pointing – mortar between stone/brick in walls• replace uPVC windows
Every 10–20 years	<ul style="list-style-type: none">• renew render coatings on walls or chimneys
Every 20–30 years	<ul style="list-style-type: none">• replace felt roof coverings• major overhaul of tiling on roofs
Every 40–50 years	<ul style="list-style-type: none">• replace lead roofs• replace tiled roofs• some work to sandstone walls and chimney heads
Every 50–100 years	<ul style="list-style-type: none">• replace slated roofs• replace cast iron gutters and downpipes• replace external woodwork• replace cast iron railings

4.4 Major repairs

Occasionally, you will need to get major works carried out on your building, so it is useful to understand how they should be dealt with. As it will be difficult to obtain comparative estimates from different building contractors unless the work is described in detail, you would be well advised to appoint either an architect or a surveyor to specify the work and manage the contract. Your local council may also be able to help organise major repairs under its Scheme of Assistance (see section 5.2).

The roof is a good example. If you approach certain contractors, they may suggest that the entire roof needs to be replaced. However, before you do anything, make sure that replacing the roof covering is the solution to the problem. You may only need to replace the nails or some of the tiles.

Professional advice from a property manager, surveyor or architect could save you costly and unnecessary work. And as a good part of the cost of any work lies in the scaffolding costs, it is often much better value to carry out a full programme of work to a good standard rather than patch and repair.

Finally, if the building is three stories or more, it is advisable to have stainless steel roof anchors fitted to the ridges. That will make it safer for any tradesperson carrying out maintenance on the roof.

If you need to carry out repairs to a listed building, there are additional factors that you need to consider (see 5.2.2).

We need some extensive work carried out. Can our property manager handle it, or should we employ a consultant?

That will depend on the experience of your property manager and the scale of the work. Large repair contracts demand a high level of coordination among a number of different professionals. A roof renewal, for example, could involve the services of an architect, an engineer, a quantity surveyor and a clerk of works.

While your property manager may coordinate this, on larger works it is essential to use someone skilled in project management. Therefore, you may prefer to employ an architect. Architects are experienced in coordinating services and preparing specifications and details for them to work to. For example, a quantity surveyor may be employed to prepare details of the quantities of materials required from the architect's drawings. That will make it easier to compare quotes from different building contractors. If builders are asked for quotes on the basis of a loose specification, they will each interpret it differently, their quotes will vary considerably, and you will find it difficult to compare them. When the work goes ahead, a clerk of works may be employed to ensure that the work meets the architect's specification.

4.5 Access for maintenance, repairs and services

This section only applies if your title deeds do not tell you about access for maintenance and the rules of the Tenement Management Scheme apply (see 2.5).

You and your fellow owners, and people authorised by you, have a right of access to each other's flats, if access is necessary to:

- carry out maintenance that was decided by a scheme decision;
- carry out repairs to a part owned by an individual;
- carry out inspections to decide if maintenance is needed;
- lead through a service pipe, cable or other equipment, as long as it is not wholly within another owner's flat;
- make sure that any part of the building that provides support and shelter is being maintained;
- make sure that none of the owners is doing anything that might damage the parts of the building that provide support and shelter, or doing anything to reduce the natural light to the building; and
- calculate the floor area to decide how costs should be allocated.

The owner or the occupier must be given reasonable notice that access is required and, within reason, can refuse access at inconvenient or inappropriate times.

Where access is gained to a flat for the reasons above, the flat must be restored to its original condition. If an authorised person (such as a contractor) causes any damage, the owner who gave the authorisation is jointly responsible with the authorised person for reinstating it or the cost of repairing it. The owner can recover his or her costs from the authorised person.

4.6 Keeping your tenement in a reasonable state of repair

Your council has powers to insist that you keep your tenement in a reasonable state of repair, the council

will determine whether this is the case but in all situations it must at least meet the tolerable standard. The tolerable standard consists of a set of criteria covering the elements of a house that are fundamental to its functioning as a home. The criteria cover issues of public health, comfort and safety. The tolerable standard focuses only on the building itself, and does not extend to internal decoration, heating systems or other utilities in the house.

The tolerable standard

To meet the tolerable standard, a building must meet **all** the following criteria:

- It is structurally stable.
- It is substantially free from rising or penetrating damp.
- It has satisfactory provision for natural and artificial lighting, for ventilation and for heating.
- It has satisfactory thermal insulation (currently defined as having some form of roof insulation where the property is capable of this – for example this element would not apply to ground floor flats).
- It has an adequate piped supply of wholesome water available within the house.
- It has a sink provided with a satisfactory supply of both hot and cold water within the house.
- It has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house.
- It has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house.
- It has an effective system for the drainage and disposal of foul and surface water.
- In the case of a house having a supply of electricity, it complies with the relevant requirements, is adequate and safe to use (this does not cover equipment and appliances).
- It has satisfactory facilities for the cooking of food within the house.
- It has satisfactory access to all external doors and outbuildings.

A property that fails any of these criteria is 'below tolerable standard' (BTS).

Flat owners should note that 'satisfactory access' includes the state of the common entrance ways, so stairs should be safe and not so worn so that they pose a real danger to someone using the stair. Where a stair railing is unsafe, or unstable because it is seriously damaged, or has gaps large enough for a toddler to fall through, this might also make a property BTS. Temporary repairs with rope or wire are not considered satisfactory. Stair lighting must also be adequate.

4.7 Finding a reliable contractor

Some councils run trusted trader schemes where firms that register are subject to some checking and owners can record their views on the firms they have used. The Scottish Government is working with councils and the construction industry to develop proposals for a national trusted trader framework. In the meantime, check your council's website or speak to their trading standards department to see if it has such a scheme.



5 Paying for repairs

5.1 Maintenance accounts

If you and your fellow owners take a scheme decision (see 2.10) to carry out maintenance, or your manager or factor decides to do so, contractors may not be willing to start work unless the money has already been collected. Therefore, you can decide that each owner who is liable for a share of the cost should deposit his or her share of the estimated cost with someone nominated for this purpose. This could be an owner, property manager or agent. If the deposit for the work is more than £100 or, if taken together with other deposits made in the past 12 months, more than £200, then the money must be paid into a maintenance account.

Key points to note about a maintenance account, as set out in the Tenements (Scotland) Act 2004, are:

- The account must be one that pays interest with a bank or building society and a property manager or at least two other people (who do not have to be owners) must be authorised to operate the account on behalf of the owners.
- Money must be paid in to it on an agreed date not less than 28 days after the decision to have work carried out was made.
- The sums mentioned above may be changed by the Scottish Parliament from time to time to reflect the value of money. Check current limits with your council.

Your council may be able to give you a small grant to set up or wind up a maintenance account.

Things you should consider in setting up a maintenance account are:

- will the maintenance account be set up for just one common repair or will the account be kept going with regular payments from all owners to build up a building maintenance reserve fund;
- whether owners will be expected to pay in their shares on the same date;
- how payments from each owner will be identified;
- arrangements for withdrawals; and
- what happens when an owner moves away (see 7.2).

5.1.1 Operating the maintenance account to pay for scheme repairs

When a maintenance account is required, you and your fellow owners must be told about it in writing by whoever is nominated to hold deposits. You must also be given a note that summarises the work to be carried out and details of:

- the estimated cost and why it is considered necessary;
- how the shares of the cost have been worked out;
- the other owners' shares;
- the date the decision was made and the names of those who agreed to the work;
- the timetable for the work, including the start and finish dates;
- the number and location of the maintenance account and the names and addresses of those authorised to operate it;
- the last date for owners to pay their shares into the maintenance account; and
- a refund date on which you can reclaim your deposit if the work is not started by the start date.

If you are not given a refund date, you can reclaim your deposit if the work has not started 28 days after the start date. Any money left in the account after the work has been paid for must be returned in proportion to the shares deposited.

5.2 Help from your local council

The Housing (Scotland) Act 2006 introduced changes to the way home owners are helped to undertake repairs and improvements. The previous system of support meant that owners either got grant assistance or no assistance at all – the scheme of assistance introduced by the 2006 Act will give councils greater flexibility to provide support to more people.

Your council has a scheme of assistance that says how it will help owners maintain their homes.

From 1 April 2009 councils have had a duty to prepare and publish a statement of assistance, and have a transitional year to decide when to introduce their schemes. Each local scheme of assistance will be different but they will all have a number of features in common:

- i. You as owners are responsible for the costs of maintaining your properties. The main source of finance for repairs must be your own savings and loans rather than grant subsidy.**
- ii. Your council will offer more advice and assistance to owners in future. This may include a wider range of helpful information leaflets, websites, practical help to get work done, perhaps even training courses and special advisers such as mortgage brokers, who will be able to help you steer your way through repairs and finding finance.**
- iii. Councils will decide their own priorities, and, as many recognise that flat dwellers have particular problems in getting repairs organised and that repairs to high buildings can be very expensive, you may be able to get more help as a flat owner than as the owner of a house. However, it is unlikely that you will automatically get a grant.**
- iv. As a last resort, the council may use enforcement powers to carry out work and apply a repayment charge to recover funds.**
- v. The council's statement of assistance will set out what work the council considers to be a priority. This should be publicly available, for example on the council website. It is these works that will get most help.**

5.3 Financial support and advice

If you cannot raise enough money through your income, savings or from a commercial loan to carry out repairs, the council may be able to help you get a loan. This may be subsidised depending on your circumstances. Grants may still be available as a very last resort.

Any help will be available on the basis of your circumstances and this will generally include looking at your income, savings, ability to access affordable high street lending, and wealth (for example, what equity you have in your home). This may mean that, for a given repair, an applicant with no free income, equity or savings may receive more financial help than someone in the same situation who has paid off their mortgage. This is because the person with no mortgage could potentially be helped to access an equity stake loan of some sort to fund repairs.

If you need to take out a loan for funding a large repair, you should obtain good financial advice. Generally, the cheapest loan is one secured on your home and a mortgage adviser will be able to help you.

If you are an older person or have a disability, your local Care and Repair agency or Ownership Options may be able to offer you further assistance (see Section 9 for contact details).

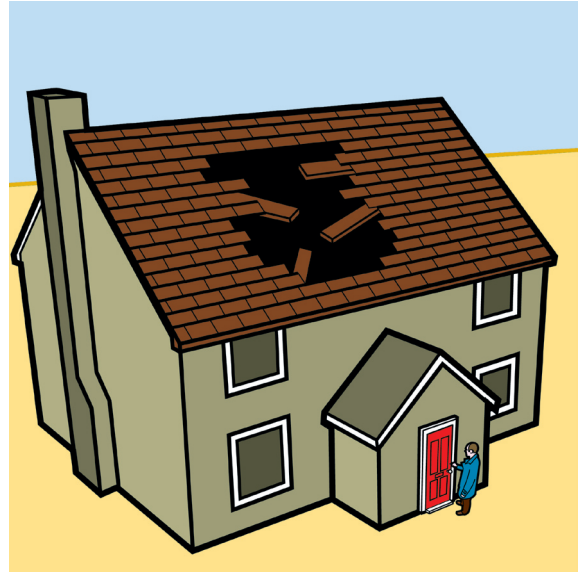
5.3.1 Funding future major repairs

You could set up a sinking fund for the building – also known as a building maintenance reserve fund – to which all of you make a monthly contribution. If you have a property manager, they can administer the fund. However, a sinking fund usually only covers the costs of minor repairs and routine maintenance. It is unlikely to cover the full cost of a major repair unless you build up a large fund, for instance, you know you have major overhaul of the roof due in three years time and it is going to cost £25,000. There are eight flat owners. You would each have to save £87 per month to pay for this. With such large sums of money at stake, it might be better for each owner to have their own savings account or be prepared to take out a loan. (See 7.2 for what happens to the fund when someone sells his or her house.)

5.3.2 Help for owners of listed buildings or those in conservation areas

If you live in a listed building, you may be obliged to use traditional materials and techniques to maintain the building. However, if your home is listed or your building is in a conservation area or an area where a town scheme is in place, you may be eligible for special grants. You should contact your local planning office for more information and advice on what you need to do and any assistance that can be given. If you live in Edinburgh's New Town or Glasgow, Aberdeen, Stirling or Dundee there are conservation trusts that can give advice and help you obtain grants.

If you plan to apply for grant aid, you must employ a conservation accredited architect or surveyor to carry out a survey and prepare a report.



6 Compulsory repairs and maintenance powers, uncooperative owners and disputes

This part of the guide provides information on dealing with difficulties with your fellow owners, and the powers councils have to force owners to maintain and repair their buildings.

Your first point of reference is your title deeds. They may say how particular problems should be resolved. If they don't, then the relevant parts of the Tenement Management Scheme will apply (see 2.5).

Where you are experiencing continuing difficulties with other owners, there are two potential courses of action.

- i. You and your fellow owners can yourselves take action against the owner causing difficulties. You should take legal advice. You will have to pay for legal advice from a solicitor but you may be able to get free advice from your local Citizens Advice Bureau (see Section 9). However, if you have problems, you should consider alternative ways of resolving them before you take legal action (see 6.5).
- ii. You can ask the council to use their compulsory repair powers such as work notices and maintenance orders, or to pay the missing share (see 6.6–6.11).

6.1 Owners' obligations

Provisions in the Tenements (Scotland) Act 2004 oblige owners to participate in the proper management of the building and common repair schemes.

- Scheme decisions properly taken by a majority of owners (whether under the title deeds or the Tenement Management Scheme) are binding on all owners within a tenement, unless there is a successful appeal.

- The scheme decision is binding on owners and their successors (if they sell) and can be enforced by any owner or a third party authorised in writing who can bring a claim in that person's name. This allows a property manager to take court action against a non-paying owner. (The other owners will still have to meet any legal or other costs.)
- If an owner has not paid his or her share of costs incurred through a scheme decision, he or she is obliged to pay even if he or she has decided to sell (but see 7.1).
- The owner of any part of a tenement that provides support or shelter has an obligation to maintain that part so that it continues to provide support and shelter. Where this concerns scheme property, any of the common owners may take action to carry out the required repairs, without waiting to get the agreement of the other owners, and then recover the costs (see 2.11).

6.2 Dealing with disagreements over decisions

6.2.1 Am I liable for the costs of a decision that I didn't know about?

If a decision under the Tenement Management Scheme or your title deeds is taken irregularly (that is, the correct procedures were not followed), you are not liable to pay your share of the costs if:

- you were not aware that the decision incurred costs; or
- on becoming aware you immediately objected to the costs being incurred.

That procedural irregularity does not otherwise affect the validity of the decision but it does mean that the remaining owners will need to cover that owner's share.

6.2.2 Appealing against a decision

You may be unhappy about a decision you did not vote for or a decision taken before you bought your flat where the work has not yet been carried out. If so, you can apply to the sheriff court to have it cancelled. However, the sheriff will only cancel a decision made by the majority of owners if it is not in the best interests of the owners as a group or if it is unfair to one or more of them. You cannot appeal against a decision you have voted for. You should take legal advice about going to the sheriff court. You must apply to the court within 28 days if the decision was made at a meeting you attended, or from when you were told about the decision. During that time, the decision cannot be implemented.

6.2.3 Where an owner has majority ownership

If the decision you did not vote for was about maintenance for which you are liable for 75% or more of the costs, you can cancel that decision by sending the other owners or their agents (that is, persons or firms authorised to act on their behalf), a written notice.

6.3 Refusal to pay

If any owner refuses to pay his or her share of a scheme cost (see 2.7), the obligation to pay can be enforced in the sheriff court by any owner or anyone authorised by an owner or owners. In these circumstances, you should take legal advice (see 8.2).

6.4 Owners unwilling to pay

To obtain payment from an uncooperative owner, the other owners will need to do the following:

- Ask a solicitor or adviser to write to the owner, pointing out his or her obligations under the title deeds or the Tenement Management Scheme. This can often be enough to resolve the problem.
- Commission the repair and be prepared to pay the bill themselves.

- Send the uncooperative owner a bill for his or her share with a stated time (say 7–14 days) in which to pay.
- If no payment is received, obtain a decree by raising an action in the sheriff court for payment against the person owing the money.

Your solicitor will also be able to advise you how to enforce the decree and get the money owed to you.

Going to court to enforce obligations in title conditions or the Tenement Management Scheme should be your last resort as it can be slow and expensive. You should get a solicitor to advise you on the strength of your action. You might want to ask if you are eligible for legal aid. If you do go to court you may not be successful and may end up paying court costs. Some home insurance policies may assist with the costs of legal action. Another option is alternative dispute resolution.

6.5 What is mediation?

Mediation provides ways of sorting out problems and disputes without going to court, particularly if it involves people with whom you have regular contact, such as neighbours. It has the advantage over legal action of:

- being more flexible;
- solving your problems faster;
- being less stressful; and
- costing you less money.

Both parties must be willing to take part. An independent mediator will listen to the views of both parties and try to help them to reach a mutual agreement or compromise. Some courts also have mediation schemes designed to avoid the use of court action. They can be useful if you have disputes over, for instance, payments for common repairs or maintenance.

The Scottish Mediation Network can tell you whether a mediation service is available in your area (see Section 9).

6.6 Help from the council where one owner can't pay – 'missing shares'

Under the Housing (Scotland) Act 2006, councils have powers to pay missing shares into maintenance accounts.

The missing share provision works like this:

1. The other owners will have to show the council that they have gone through all the proper procedures for commissioning repairs (see Section 4).
2. The council should have a framework for deciding who is unable to pay and when it is unreasonable to expect an owner to pay.
3. Before paying in a missing share, the council must satisfy itself that the maintenance is reasonable, and that the owner is being asked to pay the rightful share according to the title deeds or the Tenement Management Scheme.

It can only pay in the missing share where:

- the owner is unable to pay in the funds; or
- it is unreasonable to ask them to do so; or
- the owner cannot be identified or found by reasonable inquiry.

You should note that the missing shares provision does not cover the case of someone who simply and unreasonably refuses to pay. Fellow owners will need to use the Tenements (Scotland) Act 2004 to pursue these owners through the court (see 6.4).

There is no obligation for the council to pay a missing share. However, if it does, the council can recover its costs. These can include the share itself, any administrative expenses in relation to making that payment, and interest at a reasonable rate from when it first serves the request for payment.

6.6.1 What if the council won't help with missing shares?

If the council will not help by paying missing shares, then the other owners must pay the share equally or by flat area (whichever applies). If the owner is bankrupt or can't be found, costs are still owed to other owners. However, the owners can decide that he or she is exempt and divide costs among themselves. If the owner is untraceable, the money could ultimately be recovered from the value of the owner's property. This would require court action.

6.7 Work notice

For works notices and maintenance orders, the definition of 'house' includes flats and common areas, such as stairwells, bin stores, roofs, gardens, drying greens, back courts, landscaped areas and garages. Non-residential premises in the same block can also be covered.

A work notice is a compulsory repair order which the council can serve to ensure that works are carried out. The work notice will set out:

- the reason for serving the notice;
- the work required;
- the standard that the house should achieve on completion; and
- when the work must be completed (which must be a reasonable period and at least 21 days).

Where the council serves a notice it is required to provide owners with assistance, for example information on how to carry out repairs. It is not obliged to carry out work on the owners' behalf. However, if the owner does not comply with the notice within the time limit, or to the standard set out in the notice, the council can carry out the work itself and reclaim the cost from the owner.

Other important points to note about a work notice are that:

- **If you have a mortgage or other standard security on the property, your lender will also be served a copy of the notice.**
- **Work notices can be served on non-residential premises if they are in the same building as sub-standard housing.**
- **The notice can only be issued to deal with amenity issues as part of a Housing Renewal Area action plan (see 6.11).**
- **You have 21 days to appeal against a work notice to the sheriff court.**

If you do not carry out the work specified in the work notice within the time allowed, the council can step in to carry out the work itself without giving any further notice.

6.8 Maintenance orders

A council can serve a maintenance order where you have not maintained, or are unlikely to, maintain your house to a reasonable standard. It can also serve a maintenance order on a house where a work

notice has been carried out but the benefit of that work has been reduced or lost because of a lack of maintenance.

For example, a work notice might be served because gutters and downpipes left leaking for a long time have led to dampness and dry rot. A maintenance order might require a plan to ensure the gutters are cleaned every year and downpipes painted after four years to prevent the problem recurring. It should be noted though that a work notice does not automatically mean there will be a maintenance order.

The order requires you to develop a maintenance plan to keep the property maintained to a reasonable standard for a period that can be as long as five years. The council will be able to enforce the maintenance plan if required and recover the costs from you.

While a work notice is a 'one-off' intervention, a maintenance order will allow councils to take a longer-term approach to the maintenance of properties. The order might cover all or just part of the building and could also set out how often the plan requires action and the level of detail that is required. The key thing is that the maintenance plan secures the maintenance of the house to a reasonable standard.

The maintenance order will be recorded in the Land Register so that your lender and any future buyers will see it. You can appeal against the decision to serve a maintenance order.

6.9 Maintenance plans

A maintenance plan will set out what regular maintenance works need to be carried out. A joint maintenance plan will cover the common areas of tenements but can also include works that are your individual responsibility (for example, painting windows) or other property that you are responsible for maintaining but don't actually own). The section on establishing a building maintenance schedule will give you an idea of what is likely to be in a maintenance plan (see 4.3).

The plan will also set out the owners' shares for implementing the works. These must be in accord with what is set out in the title deeds or the Tenement Management Scheme.

The maintenance plan must set out:

- **what maintenance is needed throughout the period of the plan;**
- **what steps are to be taken to achieve this (e.g. annual surveys);**
- **when these steps are to happen (e.g. every August); and**
- **an estimate of the costs.**

The owners may also be required to:

- **appoint someone to manage the implementation of the plan; and**
- **open, and deposit sums into, a maintenance account.**

If the plan is for three or more houses, a majority of owners must agree to the plan before the council can approve it. If you do not respond in the time limits set out in the maintenance order, or if the council is not happy with the plan you submit, it can devise the plan instead. You can appeal against the council's decision not to approve the plan or to devise the plan itself. You should take legal advice if you are considering appealing. Once the plan is approved, it will be registered.

The council may ask you to submit a report to the council every year to show that you are carrying out the plan as intended. If there is a problem, the council will probably want to speak to you about this first before taking action but if there is continual lack of action, the council may step in to do the work and then charge you.

Councils have a right of entry to check that the plan is being carried out and can also recover the costs of enforcing the maintenance plan.

6.10 How will the council get its money back from owners?

If a council enforces a work notice, it can recover the costs from you, including interest and administrative costs. The council will notify you of the costs, and will serve a notice on you if the sum is to be paid by instalments. Interest can only start from the date the notice is served.

The council can issue a repayment charge which is registered against the title of the property concerned so that anyone buying the house can see that the charge is there. It is likely that buyers will want the charge to be paid off before they purchase the property.

The repayment charge will normally be paid off in 30 annual installments. You can pay off the charge early if the council agree. If you are interested in early repayment you should discuss this with the council.

6.11 Dealing with neighbourhood housing problems

Sometimes it's not enough to repair and improve just one tenement – the whole street or area needs improvement. Councils can declare Housing Renewal Areas (HRAs) to deal with this type of problem.

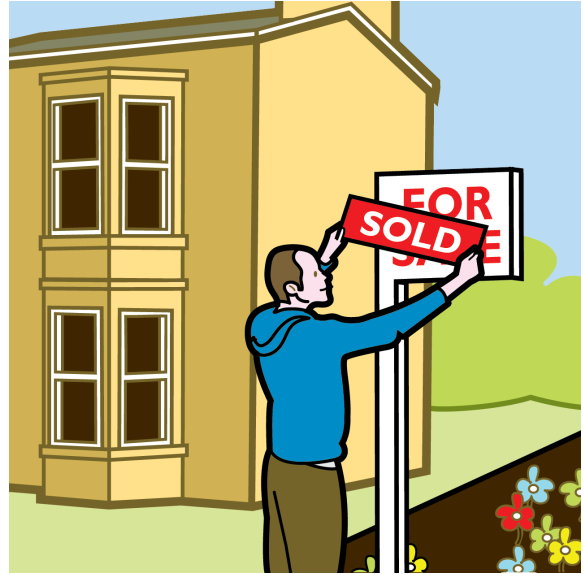
In an HRA the council has powers to serve work notices not just for repairs but also to make owners improve their properties if they are affecting the amenity of the area – this could include dealing with front gardens and back courts or other works to improve the appearance of the area. Declaring an HRA also gives the council additional powers to demolish houses where they are in serious disrepair.

An HRA can be declared where there are significant numbers of sub-standard houses or the appearance or state of repair of any houses is affecting the amenity of the area.

As owners, you can also ask your council to declare an HRA. The council will want to be satisfied that the situation cannot be dealt with by just serving individual work notices and that voluntary action on its own won't work.

The HRA can be of any size. It could be just two or three closes in a row of tenements where it might be more economical to scaffold the whole building so that works can be undertaken more economically or so that a back court scheme can be undertaken.

For more information on Housing Renewal Areas you should contact the council.



7 Buying and selling

7.1 What happens when an owner sells and works are agreed or underway?

An owner is liable for the costs of work underway, carried out or to be carried out as a result of a scheme decision. If an owner sells his or her flat, he or she remains liable for any outstanding costs in relation to the work.

However, once the owner has moved, it may be difficult to trace him or her to recover what is owed. Therefore, fellow owners would be advised to register a 'notice of potential liability for costs' with the title deeds or land certificate. As long as it is registered 14 days before the sale takes place, it will make the selling owner and new purchaser jointly liable for the costs. The remaining owners can then ask either the seller or buyer to pay. If the new owner has to pay, he or she can recover the costs from the previous owner.

If you and your fellow owners wish to register a notice against a flat whose owner is selling and is potentially liable for unpaid costs, you should consult a solicitor.

The most satisfactory solution is that the purchaser takes account of the unpaid costs in the purchase price. In the property questionnaire that forms part of the Home Report, sellers should disclose any responsibilities they have for common repair works.

If, on the other hand, you are owed money from a deposit you made that has not been spent after work has been paid for, you can still recover it after you sell your flat.

7.2 What happens to a maintenance account or building maintenance fund when an owner sells?

If you and your fellow owners set up a properly constituted owners' association, contributions to a maintenance account or building maintenance fund belong to the owners' association, and not to the individual owners. If one owner sells, he or she should tell his or her solicitor, who should take the seller's share into account when agreeing the settlement price with the buyer.

7.3 The Home Report

Homes put on the market for sale from 1 December 2008 must have a Home Report. The purpose of the report is to give buyers information about the condition and value of a property before they buy.

The Home Report has three parts:

- a house condition survey and valuation
- a property questionnaire
- an energy report.

The house condition survey and valuation

The survey is carried out by a qualified surveyor and the report tells you about the type, accommodation, neighbourhood, age and construction of the property, its condition inside and outside and the services and the common grounds. A condition category is given for each of 24 separate elements of the property.

Category 1 – No immediate action or repair is needed.

Category 2 – Repairs or replacement requiring future attention, but potential purchasers are advised to get estimates.

Category 3 – Urgent repairs or replacements are needed now. Failure to deal with them may cause problems to other parts of the property or cause a safety hazard. Estimates for repairs or replacement are needed now.

The survey also tells you about accessibility, information that should be checked with a solicitor or licensed conveyancer and gives an opinion of the property's market value and an estimated reinstatement cost for insurance purposes.

The property questionnaire

The property questionnaire is completed by the seller and contains information for purchasers, solicitors and surveyors. It includes, for example:

- property management arrangements;
- responsibilities for shared and common areas and the shares that need to be paid towards the common repairs;
- details of any compulsory repairs notices, work notices and maintenance orders that may have been served on the property;
- any structural problems or storm damage that may have occurred in the past;
- alterations that have been made to the home;
- whether it is listed or in a conservation area; and
- details of any notices that may have been served on the property about planning applications from neighbours;

The energy report

The energy report tells you about a home's energy efficiency rating and its environmental impact in terms of carbon dioxide emissions. It gives information on the cost of running the property in terms of heating, lighting and water heating, recommends ways to improve the building's energy efficiency and gives contact details for further advice and information about how to make a home more energy efficient and save fuel costs. It rates the property on a scale from A to G with A being the highest energy efficiency rating.

7.3.1 What this means for buyers

If you are buying a flat, the seller or his or her agent must give you a copy of a Home Report within nine working days of you asking for it. The seller can make a reasonable charge to cover the cost of copying the report and posting it to you (it could be sent electronically) but can refuse to give you a copy of the report if he or she believes you are not seriously interested in purchasing the property.

If any repairs are marked as category 2 or category 3, you should consider if you can cope with the repair works. If there are lots of similar flats on the market, you could just walk away. If you like the flat a lot, you should get estimates for completing the works.

There are also exceptions to the duty to provide a Home Report. These include, for example, new housing sold off-plan or to the first occupier; newly converted property not previously used in its converted state, right-to-buy homes, dual-use homes used for residential and non-residential purposes. If the house has been on the market since before 1 December 2008 it does not need a Home Report.

If the seller won't give you a Home Report, ask your council's trading standards department for help.

7.3.2 What the Home Report means for sellers

Do not attempt to sell your flat without a Home Report. There is a penalty charge of £500 for failing to provide one – much the same as the cost of getting a report, which you will still have to pay for.

In the past, many buyers bought their flats with only a valuation survey, unaware that it did not give full information about the property, the repairs required or the costs of those repairs. With a Home Report, potential buyers will have more detailed information about the condition of the property and how well it is managed. If the flat needs significant repairs, they will know about this before committing themselves. This could well put them off buying or cause them to offer a lower price because they know that at some point in the future, they will need to extend their loan to pay for repairs.

This means that it will be worth your while getting your fellow owners to agree a plan of works to keep the building in good condition. A good start would be to convince your fellow owners to commission a repairs survey and to get a programme of repairs and maintenance in place well before any of you plan to sell.

If it is too late for that and you need to sell before you can start on the work, get further quotes yourself for the works required and show these to potential purchasers – they may be a lot less than they fear.



8 Where can we get technical and legal advice?

8.1 Technical advice

If you want technical advice and are not sure who to ask you can contact your local council for information and advice. Your property manager, local Citizens Advice Bureau or advice centre may also be able to refer you to an appropriate source.

Technical advice rarely comes free. The Royal Incorporation of Architects in Scotland and the Royal Institution of Chartered Surveyors in Scotland (RICS) will give you only basic information and advice. They will, however, put you in touch with member companies in your area who offer specialist technical advice at a price.

The RICS website lists some of their members – look for firms that carry out building surveys. Members have to pay to be advertised there so you may find more firms in the yellow pages.

You can find contact details for useful organisations in Section 9.

8.2 Legal advice

If you want an explanation of or advice on your title deeds, you could contact the solicitor who carried out the conveyance when you purchased your flat or a solicitor who deals with residential property. A solicitor will charge a fee for this service. You could also contact your local Citizens Advice Bureau or other advice centre to find out if it runs a legal clinic, where you can get free advice.

If you want advice about a dispute, you could consult a solicitor, which you will have to pay for, or your local Citizens Advice Bureau or other advice centre, where you can get free advice.

9 Contacts

Aberdeen City Heritage Trust

PO Box 10450

Aberdeen AB10 1WS

Phone **01224 522755**

Email **info@aberdeenheritage.org.uk**

Web **www.aberdeenheritage.org.uk**

Care and Repair

For your local project contact:

Care and Repair Forum Scotland

135 Buchanan Street

Suite 2.5

Glasgow G1 2JA

Phone **0141 221 9879**

Web **www.careandrepairsotland.co.uk**

Citizens Advice Bureaux

For your local CAB, look in the phone book or contact:

Citizens Advice Scotland

1st Floor

Spectrum House

2 Powderhall Road

Edinburgh EH7 4GB

Phone **0131 550 1000**

Web **www.cas.org.uk**

You can get on-line advice from the Adviceguide at: **www.adviceguide.org.uk/scotland**

Confederation of Scottish Local Authorities (COSLA)

COSLA can provide you with contact details for your local council.

Rosebery House

9 Haymarket Terrace

Edinburgh

EH1 2 5XZ

Phone **0131 474 9200**

Web **www.cosla.gov.uk**

Dundee Historic Environment Trust

19 Dock Street

Dundee DD1 3DP

Phone **01382 902244**

Email **info@dhet.org.uk**

Web **www.dhet.org.uk**

Edinburgh World Heritage Trust

5 Charlotte Square
Edinburgh EH2 4DR

Phone **0131 220 7720**

Email **info@ewht.org.uk**

Web **www.ewht.org.uk**

Glasgow City Heritage Trust Ltd

54 Bell St
Glasgow G1 1LQ

Phone **0141 5521331**

Email **info@glasgowheritage.org.uk**

Web **www.glasgowheritage.org.uk**

Historic Scotland

Longmore House
Salisbury Place
Edinburgh EH9 1SH

Phone **0131 668 8600**

Web **www.historic-scotland.gov.uk**

Inverness City Heritage Trust

City Partnership Office
Town House
High Street
Inverness IV1 1JJ

Phone **01463 724384**

Email **info@heritage-inverness.org**

Web **www.heritage-inverness.org**

Lands Tribunal for Scotland

George House
126 George Street
Edinburgh
EH2 4HH

Phone **0131 271 4350**

Email **mailbox@lands-tribunal-scotland.org.uk**

Web **www.lands-tribunal-scotland.org.uk**

Ownership Options

The Tudsbery Centre,
The Thistle Foundation
Niddrie Mains Road
Edinburgh
EH16 4EA

Phone **0131 661 3400**

Email **info@oois.org.uk**

Web **www.oois.org.uk**

Property Managers Association Scotland Limited

2 Blythswood Square
Glasgow G2 4AD

Phone **0141 248 4672**

Web **www.pmas.org.uk**

Registers of Scotland

Edinburgh Customer Service Centre
Erskine House
68 Queen Street
Edinburgh EH2 4NF

Phone **0845 607 0161**

Email **customer.services@ros.gov.uk**

Web **www.ros.gov.uk**

Glasgow Customer Service Centre
9 George Square
Glasgow G2 1DY

Phone **0845 607 0164**

Email **customer.services@ros.gov.uk**

Textphone users can contact Registers of Scotland on **0845 607 0168**

Royal Incorporation of Architects in Scotland

15 Rutland Square
Edinburgh EH1 2BE

Phone **0131 229 7545**

Email **info@rias.org.uk**

Web **www.rias.org.uk**

Royal Institution of Chartered Surveyors in Scotland

9 Manor Place
Edinburgh, EH3 7DN

Phone **0131 225 7078**

Email **scotland@rics.org**

Web **www.rics.org/scotland**

Scottish Mediation Network

18 York Place
Edinburgh EH1 3EP

Phone **0131 556 1221**

Email **admin@scottishmediation.org.uk**

Web **www.scottishmediation.org.uk**

Scottish Government

Victoria Quay
Edinburgh
EH6 6QQ

Phone Enquiry Line **+44 (0)8457 741 741** or **+44 (0)131 556 8400**

Email **ceu@scotland.gsi.gov.uk**

Web **www.scotland.gov.uk**

Scottish Housing Regulator

Highlander House
58 Waterloo Street
GLASGOW G2 7DA

Phone **0141 271 3810**

Email **shr@scottishhousingregulator.gsi.gov.uk**

Web **www.scottishhousingregulator.gov.uk**

Shelter Housing Aid Centres

There are Shelter Housing Aid Centres in Aberdeen, Ayr, Edinburgh, Dundee and Glasgow.

There is a housing advice free phone number **0808 800 4444**.

Shelter can also provide a list of advice centres.

Web **www.scotland.shelter.org.uk**

Stirling City Heritage Trust

Room 232
Viewforth
Stirling FK8 2ET

Phone **01786 442756**

Web **www.stirlingcityheritagetrust.org**

10

Glossary

Building maintenance fund	See 'sinking fund'.
Burdens/Real burdens	An obligation on land (or buildings) to do something or refrain from doing something on that land that "runs with the land". That means the obligation will continue even when the land (or building) is sold.
Common parts	Parts of the tenement that are not within the boundaries of individual flats.
Common property	Property that is owned by more than one person, where each owner has a right to a share in the whole property, but none has an absolute right to any physical portion of it.
Decree	A court judgement.
Emergency work	Work that would prevent damage to any part of the tenement; or work required in the interests of health and safety that cannot wait for a scheme decision to be taken.
Factor	See 'property manager'.
Land Register of Scotland	Map based register of title to land maintained by the Registers of Scotland. Nearly all house sales in Scotland are now registered in this register.
Lands Tribunal for Scotland	A lands court that hears cases and makes decisions about matters relating to land.
Maintenance	Repairs and replacement; cleaning; painting and other routine works; gardening; the day-to-day running of the tenement; the reinstatement of part (but not most) of the tenement building.
Maintenance account	An account set up to pay for maintenance and repair works.
Property manager	A company that provides maintenance, repair and management services. Property management may also be provided by a council or registered social landlord.
Register of Sasines	A register that records deeds relating to land. Some older title deeds are recorded in the Register of Sasines. Today, if new real burdens are being inserted into title deeds, the deed might have to be registered in both the Land Register and the Register of Sasines.
Registered social landlord	Housing association or housing cooperative registered with the Scottish Housing Regulator.
Registers of Scotland	Agency that maintains the two property registers: the Register of Sasines and the Land Register of Scotland.

Reinstatement value	The full cost of rebuilding the property, not just its market value.
Repayment charge	A charge registered by the council against the title of the property to cover costs of work carried out, paid off in instalments.
Right to Buy	The Right to Buy scheme gives eligible council and housing association tenants the right to buy their property at a discount.
Scheme costs	Any cost incurred through a scheme decision.
Scheme decision	A decision taken by the owners of a majority of related properties, such as in a tenement.
Scheme of assistance	Council schemes to support owners that set out how the council will help owners maintain their homes.
Scheme property	Parts of the property that are so vital that their maintenance is the responsibility of all owners who have common property rights in those parts.
Sheriff court	A local court, presided over by the sheriff who is a legally-qualified judge.
Sinking fund	A fund to which owners contribute to help save for future maintenance and repairs costs.
Tenement	A building comprising two or more related flats that are owned or designed to be owned separately and which are divided from one another horizontally.
Tenement Management Scheme	The default management scheme that applies where there are gaps or defects in title deeds.
Title conditions	Rights and obligations over land inserted in deeds by owners of the land, for example, you might be allowed to use an access path but a condition of that use is that you help to maintain it.
Title deeds	Legal document that states who has title or ownership of a property, gives details of the property and sets out the conditions that affect the property.

Appendix I Title Deed check list

What is in the Tenement Management Scheme?	Note where title deeds are full, or have gaps or defects. If there are gaps or defects use what is the left-hand column
The following are ‘scheme property’ – the parts that everyone with common property rights is required to maintain. Your title deeds may refer to these as ‘common property’ or make the owners of certain flats solely responsible for some of these building parts.	
Any part of the tenement that is the common property of two or more owners, for example, the close or stair	
Any other parts of the tenement that your title deeds say must be maintained by two or more owners, for example, the gutters and downpipes	
The ground on which your tenement is built (but not the back court or front garden)	
The foundations	
The external walls	
Its roof, including the rafters and any structure supporting the roof	
The part of a gable wall that is part of the tenement building	
Any wall, beam or column that is load-bearing	
Parts that are the responsibility of only those who have use of them	
Any part of the tenement that is the common property of two or more, but not all, of the owners in a tenement	
The following are not scheme (common) property under the Tenements (Scotland) Act 2004 and are an individual owner’s responsibility. Your title deeds may say differently or list additional items that are the responsibility of individual owners	
Parts that serve only one flat such as doors and windows, skylights, vents or other openings that serve only one flat	
Any chimney stack or flue that serves only one flat	
Any extension that serves only one flat	
The Tenements (Scotland) Act defines the following as maintenance. Your title deeds may have a different list	
Repairs and replacement	
Cleaning	
Painting and other routine works	
Gardening	
The day-to-day running of the tenement	
The reinstatement of part of the tenement building	

The following are things that owners can make scheme decisions about. Your title deeds are unlikely to use the term 'scheme decision' and how you should make decisions about the following may be found in a number of places in your deeds	
To carry out maintenance to scheme property	
Having scheme property inspected so that you can decide whether and how much maintenance is needed	
Appointing or dismissing a manager or factor to manage the tenement	
Authorising a manager or factor to carry out inspections and arrange maintenance up to a particular cost	
Arranging a common insurance policy for the reinstatement value of the tenement	
Deciding that an owner does not have to pay his or her share, or part of a share, of a scheme cost	
Authorising any maintenance of scheme property already carried out by one owner	
Installing a door-entry system controlled from each flat, even if it is not to replace an existing system	
Changing or cancelling any previous decision	
How group or scheme decisions are made. Your title deeds may deal with these issues in a number of different places	
A decision is passed by a simple majority of owners	
An owner can appoint someone else to make decisions on his or her behalf	
A properly made decision is binding on all owners (but there are some exceptions)	
Decisions can be made either at a meeting called with 48 hour's notice or by taking a poll of all the individual owners that can practically be contacted	
How owners must be notified	
What happens if owners do not agree with a decision	
How the costs of repairs and maintenance are to be shared	
Owners pay equal shares of common repairs unless flats are of very different sizes in which case shares are proportional to the floor area of flats	
Owners become responsible for costs incurred from the point where the scheme decision is made or emergency work commissioned	

Other costs that owners are obliged to pay	
Inspection for maintenance	
Payments to a manager or factor to carry out inspections and maintenance	
The running costs of scheme property that benefit more than one flat	
Management fees and costs	
Common insurance premiums	
The costs of calculating the floor area of any flat, where this is necessary to decide how costs should be shared	
The costs of installing a door-entry system that can be controlled from each flat	
Any other costs relating to the management of scheme property	
Other issues	
Allowing access to flats to allow work to take place	

Appendix 2 What to look for in choosing a new property manager

You can use this checklist when looking for a new property manager or if you are trying to understand what you are paying for at the moment. It is unlikely that any property manager will offer all of the following. As owners, you should decide which are most important to you and choose the property manager that offers the best support for these critical services.

Property inspections

- Are regular property inspections included in the annual fee or charged for separately. If charged for separately, at what cost?
- How often will they carry out property inspection and what will they check?
- Who will carry out the inspection? What are their qualifications?

Do they provide a high-quality service?

- What percentage of jobs do they check on completion?
- How do they decide which jobs to check?
- Do they regularly review the firms on their lists?
- Do they have a formal tender procedure?

Communications

- What arrangements do they make to let owners know that a repair has been ordered?
- How will they keep you informed of repair progress, particularly if they are waiting for agreement from other owners for a repair to proceed?
- Will they attend owners' meetings and if so, how often, and will they charge you for this?

Charging you

- What level of breakdown of charges can you expect to see?
- Do they add a percentage to the repair costs the firm charges them to cover their administration costs?
- At what cost level will they seek competitive quotes for individual pieces of work?

Non-payers

- How do they chase up non-payers?
- Will they take an owner to court on behalf of other owners?
- What are their procedures if you do not pay their bills? Some will charge for reminder letters and send these frequently.
- What rate of interest will they charge on unpaid bills?

Complaints and dispute resolution procedure

- Do they have a complaints or dispute resolution procedure?
- How quickly will they respond to letters of complaint?
- Under what circumstances will they charge for writing or replying to letters?

Maintenance accounts

- What deposits, floats or advance payments do they require?
- Are accounts held separately?
- Is interest paid on the account?
- Is your account open to inspection at no or small cost.

Appendix 3 What to do to check your building

1. Find out if other flats have signs of disrepair

Ask your fellow owners if they have signs of damp on ceilings or outside walls or, in ground floor rooms, near the skirting. If they do, ask if you can see where the damp is so that you can try and find the same spot outside the building.

- Signs of damp in top-floor rooms near external walls may indicate overflowing or cracked gutters.
- Signs of damp in top-floor rooms near the gable or where roof slopes meet can be signs of problems with flashings or ridge pieces.
- Damp patches in the middle of ceilings can be signs of leaking plumbing in the roof space or missing or broken slates.
- Sometimes the source of the problem may be higher up the roof slope than where the signs of damp can be seen.
- Stains or mould on the outside walls may indicate leaks from rotten window sills, missing mastic around windows or show a need to repoint the walls.

2. Check the common areas

Check the common stairs for:

- cracks on walls or between stairs
- uneven or worn treads
- loose or missing railings
- broken locks on main doors
- broken or rotten stair windows
- hollow sounding floors.

Check the basement for signs of rising dampness, leaking drainage pipes, faulty wiring or general structural problems.

3. Inspect the building from outside

Looking up:

- Check the walls – look for cracks, especially those going across lintels above windows or snaking down the building. Is everything on the level? Are there areas of decayed stone, gaps in the pointing between bricks or stones, bulging or leaning walls?
- Are there any plants growing out of your building anywhere? If they are growing out of the stone, then their roots will be forcing the stones apart and letting in damp. Plants growing in the gutter mean that they need to be cleaned or rain water will spill over the top, soaking the walls with the possibility of damp and rot inside.
- Windows – can you see bare wood or flaking paint? Are there gaps in the sealant between the frames and the walls?
- Are there any trees next to the building which could hit telephone or power lines or damage the building?

- Gutters and downpipes may need painting to stop them corroding. Cracks often develop at the back of a pipe where the painting has not been done properly.

Looking down:

- Does water back up in the drains when it rains?
- Does the ground dip near the run of the drains because there is an underground leak that is washing away soil and which may affect the foundations?
- Has the ground level been built up around under floor air vents? You need a flow of air under the building to make sure the joists don't rot. There should be gratings to stop vermin entering.



Is this guide for you?

Anyone who owns a home knows that they regularly need repair and maintenance. Good maintenance goes a long way to preventing costly repair work and Scottish councils now have greater powers to promote home maintenance.

But who is responsible for maintenance and repairs when other people own part of the property?

If you live in a tenement, a high-rise block, a four-in-a-block or even a block of flats over a commercial property, you will be liable for maintenance and repair of the property's common parts like the roof, the close or stair, and the back green. So how do you find out what your responsibilities are – and what it takes to fulfil them? And how do you get all your neighbours to co-operate?

This guide tells you how Scottish property law affects your rights and responsibilities as tenement owners. It also gives advice on what owners can do to put the requirements of new legislation into practice to protect the value of their homes. Parts of this guide are also relevant to owners of houses.