

Owners' Management Companies

Sustainable apartment
living for Ireland



This research was carried out by Paul Mooney. Clúid Housing and the Housing Agency would like to thank Paul for his work in compiling this report.

Clúid Housing and the Housing Agency would like to thank all the individuals who took part in this research. The views expressed in this report are those of the author and do not necessarily represent those of Clúid Housing or the Housing Agency.

Published by: The Housing Agency and Clúid Housing

Publication date: June 2019

ISBN: 978-1-903848-61-6

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Author's thanks and acknowledgements

The author would like to thank the Research Steering Group: Simon Brooke and Brian O'Gorman of Clúid Housing, and Roslyn Molloy and David Silke of the Housing Agency. The author would also like to thank Greg Merrin who assisted with the research and interviews.

The author wishes to acknowledge and thank for their assistance and participation the research interviewees. Participants were drawn from members of the Society of Chartered Surveyors Ireland, officials from a number of Government departments, personnel from the Housing Agency and the Property Services Regulatory Authority, members of the Royal Institute of the Architects of Ireland, representatives of the legal profession, members of the Apartment Owners' Network, and others. Thanks are due to a number of other participants for their input; they have preferred to remain unnamed.

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Abbreviations and Glossary

AHB	Approved Housing Body Also called housing associations or voluntary housing associations, they are independent, not-for-profit organisations. They provide affordable rented housing for people who cannot afford to pay private sector rents or buy their own homes; or for particular groups, such as older people, or homeless people.
AON	Apartment Owners' Network A volunteer-led advocacy organisation representing the views of owners of homes in managed estates.
BIF	Building Investment Fund Also known as a sinking fund. A financial reserve accumulated by an OMC for the purpose of meeting the costs of the refurbishment, improvement, or maintenance of a non-recurring nature of the common areas of a MUD.
BLCR	Building Life Cycle Report A construction technical document that includes an assessment of the long-term running, maintenance, and replacement costs of the building fabric of the common areas of a MUD.
BTR	Build To Rent Purpose-built residential rental accommodation and associated amenity space that is designed with the purpose of being used as long-term rental accommodation, and professionally owned and managed by an institutional landlord.
CRO	Companies Registration Office The central repository of public statutory information on Irish companies and business names. Operates under the aegis of the Department of Business, Enterprise and Innovation.
DCC	Dublin City Council The authority responsible for local government in the City of Dublin.
DHPLG	Department of Housing, Planning and Local Government The Government department responsible for housing, planning and local government.
Management Agent	A person or company engaged by an OMC to provide services in respect of the management of a MUD. Typically arranges the maintenance and service delivery on behalf of the OMC. An agent may be involved in the management of more than one estate, and work for a number of OMCs.
MUD	Multi-Unit Development A development of not less than five residential units, made up of homes where amenities, facilities and services are shared.

MUD Act	Multi-Unit Developments Act 2011 An Act of the Oireachtas enacted to amend the law relating to the ownership and management of the common areas of MUDs, and to facilitate the fair, efficient and effective management of bodies responsible for the management of common areas, and to provide for related matters.
OMC	Owners' Management Company A not-for-profit company established for the management of a MUD. It owns the common areas of the estate. It is collectively owned and controlled by all the owners of the properties within the estate. The directors are elected by the OMC members, and are typically unpaid volunteers.
PRS	Private Rented Sector Property owned by a landlord and leased to a tenant. The landlord could be a natural person, a property company, or an institutional investor.
PSRA	Property Services Regulatory Authority The State body that under the Property Services (Regulation) Act 2011 licenses and regulates property services providers, including management agents of MUDs.
RTB	Residential Tenancies Board Operates Ireland's National Tenancy Register and resolves disputes between landlords, tenants and third parties. Governed by residential tenancies legislation.



85% increase in the number of apartments in Ireland between 2002 and 2016

Foreword

This research was jointly commissioned by Clúid Housing and the Housing Agency and conducted by independent researchers.

Apartment living in Ireland has increased significantly in recent years across all housing tenures. Data shows that the number of apartments in Ireland increased by 85% between 2002 and 2016. There is no doubt that apartment living and managed estates will be a continuing feature of Irish housing in the future.

Multi-unit developments (MUDs) are developments of several homes that share certain facilities. These managed estates are often apartment buildings or duplexes, but they can also be townhouses or stand-alone houses that share common facilities.

These communities rely on robust owners' management companies (or OMCs for short) for them to be successful and sustainable. OMCs are established for three main reasons:

- To manage and maintain common areas in MUDs.
- To be the legal owner of the common areas on behalf of the owner of the units.

- To be the legal owner of the beneficial or reversionary interest of each unit.

Since the Multi-Unit Developments Act 2011 (MUD Act), all new developments must have an OMC in place before any units are sold. In developments built before the commencement of the MUD Act developers are legally obliged to establish an OMC. The MUD Act provided a legal framework for the operation of OMCs in managed estates.

Considering the rapid growth in the number of apartments, OMCs, and the period of operation of the MUD Act, Clúid Housing and the Housing Agency commissioned this research to profile, examine and assess the performance of OMCs, and to make recommendations for any necessary changes that could improve their operation.

David Silke

Director of Research and Corporate
The Housing Agency

Simon Brooke

Head of Policy
Clúid Housing

Preface

The pillar functions of Government are Health, Education and Housing. All others work to provide the infrastructure, physical, administrative, and financial, to ensure their delivery.

Our world has evolved to recognise that the good of society supersedes individual needs and wants, and we build our societies on this basis. Our laws and services build on this premise and our society evolves, and continues to evolve, in the interests of us all recognising our changing needs.

In the built environment this takes its effect on planning and building regulations and controls, to deliver urban environments in the common interest. We recognise that in an increasingly urbanised environment we must deliver high-density housing and learn to live with each other in closer proximity than we necessarily want to. This requires a new type of building control and regulatory environment, where we focus not on how or what to build, but on how we live and enjoy the buildings in the interests of all within the community.

/ We recognise that in an increasingly urbanised environment we must deliver high-density housing and learn to live with each other in closer proximity than we necessarily want to /



The MUD Act was the **first piece of legislation** introduced to facilitate the fair, efficient and effective management of OMCs

In apartment developments or managed communities of high-density housing, we share services and buildings, and manage them in the interests of all occupiers, setting aside individual needs and requirements, much like government and local authorities do.

The MUD Act was the first piece of legislation introduced to facilitate the fair, efficient and effective management of OMCs. While the introduction of the MUD Act has been a success, there is now an opportunity to review its effectiveness. We can draw from what more we have learned since its implementation, and how we may build on its success, further to enhance and protect our living environments for apartment dwellers in Ireland.

Executive Summary

This report was commissioned to review the effectiveness and performance of OMCs in Ireland in the context of our nation's growing need for housing, and the constraints on land from a physical, infrastructural and societal perspective.



OMCs have existed in Ireland since the early 1970s

While it is clear that better land use and higher densities have been part of planning and housing strategy for over 20 years, the focus has been and continues to be on the delivery of housing, and not the sustainable living experience thereafter.

eight-year period to 2008 (CSO 2018). The majority of these apartments were sold as individual homes to owner occupiers or small stakeholder investors, with other apartments delivered for social housing as part of the Planning and Development Act 2000.



123 tower cranes were counted in Dublin in March 2019 – the highest number since the 2008 economic crisis

OMCs have existed in Ireland since the early 1970's when the first purpose-built apartment schemes were sold as individual units. As detailed later, the evolution of apartment titles was left to the private sector to resolve with different stakeholders – significantly those involved in development – dictating the format for the future management environment of shared ownership. After almost 40 years, the MUD Act was introduced to bring balance to the sector and seek to ensure that OMCs were empowered to manage their own living environments.

The current wave of apartment development is fuelled by Private Rented Sector (PRS) or multi-family developments, where apartments are not available for individuals to purchase, but rather all the apartments are being offered for rent. This is a positive development for our society, where high quality and professionally run rental accommodation is available to satisfy the demands of our cities.

Since the economic crisis of 2008 we have seen our built environment boom yet again with The Irish Times reporting the highest number of tower cranes in Dublin at 123 in March 2019 (Comiskey 2019).

While this new phenomenon does provide for social rented apartments under planning, it does not balance the tenure mix with owner-occupiers, or offer an OMC environment for potential tenant purchase in the future. According to Hayden & Jordan (2018) sustainable mixed tenure developments “where 30% social rented, 20% affordable rented and 50% private housing provide for a better chance” of success. This suggests a requirement for an OMC, to support the diverse ownerships and ensure equitable management. It could be argued that for

There is a difference in this boom, the last fuelled an increase of 85% in the number of apartments in Dublin in an

/ The current wave of apartment development is fuelled by Private Rented Sector (PRS) or multi-family developments, where apartments are not available for individuals to purchase, but rather all the apartments are being offered for rent /

mixed tenure to work to its optimum, the economic investment of owner-occupiers is a key factor to its success.

When researching the wider environment of MUDs, housing, and apartments, it was clear that there was some disconnection between policy and consumer protection. Legislation introduced in the last 15 years, specifically in respect of private rented dwellings, does not recognise the role of OMCs and has no jurisdiction over them. Similarly, the regulation and licencing of property service providers does not extend to OMCs. These shortcomings lead to complainants being passed from one State body to another. This position frustrates both the Residential Tenancies Board and the Property Services Regulatory Authority in resolving disputes and complaints where OMCs may be at fault. Similarly, the Office of the Director of Corporate Enforcement is known to receive complaints in relation to matters properly within the remit of the aforementioned State bodies.

The most significant recommendation of this report is the establishment of a regulator for OMCs. While this could be a standalone regulatory authority, it could also be amalgamated into a combined Housing & Property Regulator that would see a wider authority over tenancies, property service providers, approved housing bodies, landlords, developers and OMCs. Such an authority would quickly develop necessary knowledge and critical data for the development and sustainability of housing for the future.

The recommendations in this report are wide-reaching and will require primary legislative changes to implement. The result of the implementation of the changes will be to deliver a benchmark for the management of MUDs and their regulation, for the protection and benefit of the communities living and owning property within them.

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Obliging OMCs each year to return data, confirm compliance with fire regulations, and deliver details on insurance, when combined with director training, will all improve the quality of estate management. The empowerment of OMCs efficiently to collect service charge debt is key to the sustainable success of the sector, because uncollected debt is currently the biggest risk. It should be understood that functioning OMCs, displaying a capacity to collect service charges from their members, will offer a new market for loan products.

The data collation recommended will also deliver benchmarking for service charges, and measure the importance of the sector to our economy, in particular as employers and consumers of indigenous services.

Given the proportion of the population that this sector touches, and the expected growth of the sector in the coming 20 years, the investment required now to re-align the sector and prepare it for the next wave of apartment dwellers and owners will be a fraction of the cost of repairing it in the future.



The empowerment of OMCs efficiently to collect service charge debt is key to the sustainable success of the sector

Recommendations

The 14 recommendations from this research refer to:



1. Improving sinking funds provision and reporting



2. Fire safety reporting and certification



3. Establishment of Housing Regulatory Authority



4. Dispute resolution and Regulatory Authority Tribunal



5. Regulatory Authority Building Inspectors



6. OMC annual return filing



7. Lease covenant and House Rules enforcement



8. OMC director mandatory training



9. Enhancing OMC communications with owners



10. Enabling OMC borrowing



11. Regulatory Authority and mixed use schemes



12. OMCs engaging licensed management agents



13. Enhanced insurance cover and reporting



14. Removal of OMC audit exemption, and financial reporting standardisation

A young man with a beard and a young woman with long red hair are in a kitchen. The man is wearing a light blue button-down shirt and is cutting an orange on a wooden cutting board. The woman is wearing a black and white striped shirt and is smiling at him. In the background, there is a skylight and a modern kitchen with stainless steel appliances and jars on the counter.

20%

of apartments across
the country are owner
occupied

1 /

Context

Context

This research project, which examines the performance of OMCs in apartment blocks in Ireland, was jointly commissioned by Clúid Housing and the Housing Agency.



7.3% of the Irish population live in apartments compared to the EU average of 41.8%, or the UK at 14.3%



4,619 apartments were granted planning permission under the Strategic Housing Developments process (Jan 2018-Mar 2019)

The research is very timely for a number of reasons. Firstly, the Government has identified the need for apartment building as key to the delivery of housing strategy in the context of Project Ireland 2040 and the National Planning Framework. Secondly, the MUD Act, which amongst other things regulates OMCs, has now been on the statute book for eight years and there has not, to date, been any comprehensive assessment of its effectiveness published. Thirdly, there has been a growing number of reports of OMCs failing in several key areas (Gleeson 2018).

MUDs and OMCs

MUDs are developments where there are at least five residential units and the units share facilities, amenities and services. In many cases, MUDs are apartment blocks. An apartment block comprises the apartments in which residents live, and the parts of the block that are shared by everyone, which are known as common areas. These areas include some structural elements such as external walls and roofs; the entrance halls; lifts; access roads; landscaped areas; and all drains, wires, ducts, etc., that serve more than one apartment. Essentially, the common areas are those parts of a MUD that have not been sold

or granted to a unit owner for their exclusive use.

The freehold of the apartments and the common areas is owned by an OMC, which is established for this purpose and is unique to that development. Each apartment is then owned on a leasehold title. This involves purchasing a fixed term lease (which is commonly 999 years), at the end of which the apartment reverts to the freeholder (the OMC).

The OMC is typically a Company Limited by Guarantee, and the members of the company who collectively own it comprise all the apartment leaseholders. Members pay an annual fee called a service charge, which enables the OMC to fund the management and maintenance of the common areas. The common areas and the freehold of the apartments are collectively owned by the apartment leaseholders. This arrangement, or variations on it, is common across the world.

Apartments in Ireland

Apartment living is a relatively new phenomenon in Ireland, and Ireland still has proportionately fewer apartment-dwellers than any other EU country, at 7.3% of the population, compared to the EU average of 41.8%, or the UK at 14.3% (Eurostat 2018; Figure 1). There has, however, been a recent upsurge in apartment building; the number of apartments in Ireland increased by 85% between 2002 and 2016 (CSO 2018).

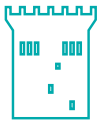
/ Apartments are primarily an urban phenomenon, as illustrated in Dublin where, in 2016, the number of apartments overtook the number of houses for the first time (CSO 2017) /

Apartments are primarily an urban phenomenon, as illustrated in Dublin where, in 2016, the number of apartments overtook the number of houses for the first time (CSO 2017). There has been a substantial increase in planning permissions for apartments in recent years (Housing Agency 2017), and this is expected to continue for the foreseeable future. Between January 2018 and March 2019 permission for 4,619 apartments was granted under the Strategic Housing Developments process (An Bord Pleanála 2019). Apartment living will become an ever more important element of the Irish housing system.

It is both inevitable and necessary that this growth in apartment living should continue. This is primarily because population increases and movements dictate that housing be provided in a far higher density than traditionally delivered in Ireland. For example, a one-hectare site could support perhaps 50 houses with gardens but could contain 250 apartments. Kearns & Ruimy (2010) suggest that it is unfair to compare density policy for a small

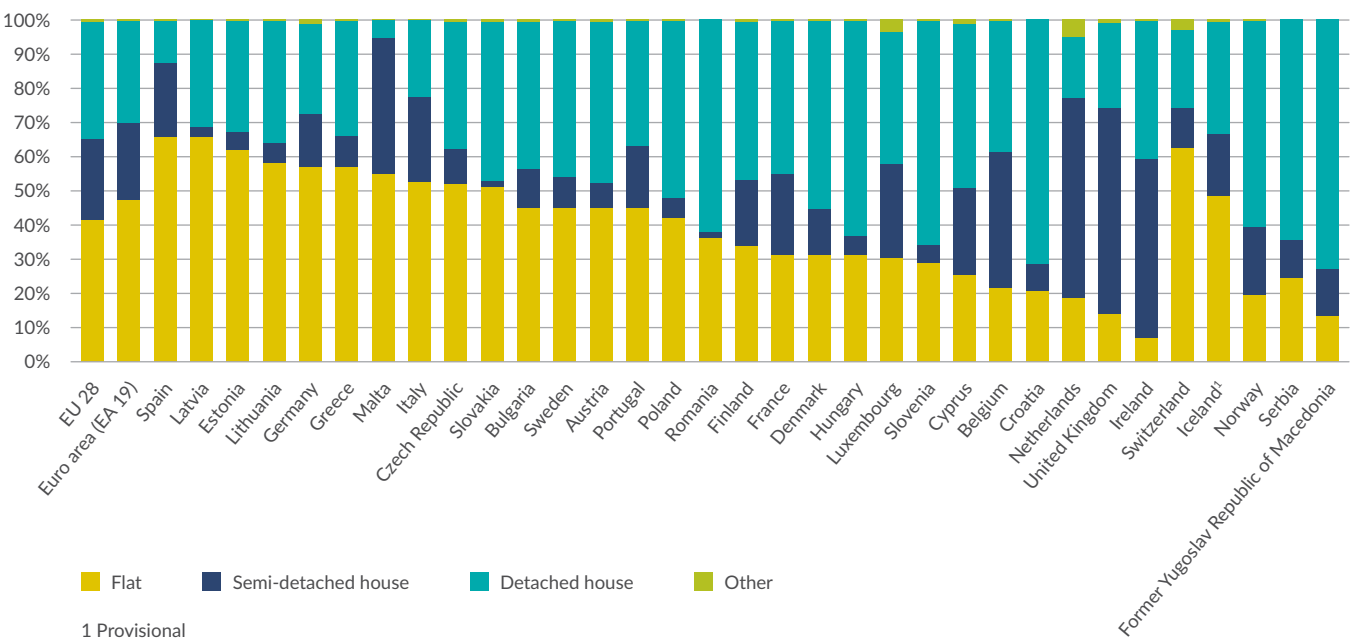
site in the context of a municipality. Dublin City's Development Plan 2011 to 2017 aspired to densities of 135 units per hectare (DCC 2010). To put this in context, the density in Stoneybatter is 40 units per hectare compared to Ranelagh's 30 and Clontarf's 10 (Kearns & Ruimy 2010). With 7 out of 10 households in the State consisting of three people or less, and expected to decline to two and a half people by 2040 (Government of Ireland 2018), the housing stock requires an immediate and significant shift to smaller unit sizes and better land use, like our European neighbours, as detailed above.

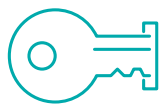
According to Ronan Lyons of Trinity College, Dublin, the country will need almost two million apartments over the coming half-century to accommodate changing demographics and increasing urbanisation (Lyons 2018). This equates to approximately 200 units per week in Dublin for the next 3,000 weeks. As demand for land becomes greater, this will assume increasing importance. In addition to providing a better use of land, higher density housing delivers greater population nodes in smaller



Dublin City's Development Plan 2011-2017 aspired to densities of 135 units per hectare

Figure 1: Distribution of population by dwelling type 2016 (Eurostat 2018)





Nearly 80% of apartments across the country are rented; approximately 20% are social rented and nearly 60% are rented privately

areas, making public transport, schools, health care, policing and other facilities more accessible and more efficient for local authorities and central government to provide.

It is important to note that apartment living in Ireland is dominated by tenants. Nearly 80% of apartments across the country are rented; approximately 20% are social rented (Approved Housing Body (AHB) or local authority) and nearly 60% are rented privately. The remaining 20% are owner-occupied (CSO 2017). The predominance of tenants impacts on OMCs, since it is the landlord, rather than the tenant, who is the member of the OMC. As the landlord does not normally live in the apartment block, in many instances most of the OMC members will not be owner-occupiers.

Much of the focus in relation to apartments in the context of the current housing crisis is on the delivery of new homes, with little or no focus on the societal impact, management and maintenance costs associated with apartment buildings, and the nature of co-operative living.

OMCs

If apartments are to play a positive role in the Irish housing system, they need to be configured in such a way as to provide long-term sustainable housing for residents, whether they are tenants or owner-occupiers.

OMCs have a crucial role to play in this. If an OMC is functioning well, the

common parts of the apartment block will be well-maintained, meaning that residents will be safe, the asset value of the property protected, common areas will be clean and attractive, the lifts will work, and the common outside areas will be well-looked-after. If, however, the OMC is not functioning well, maintenance may be sub-standard. If inadequate provision has been made for anticipated future works, apartment leaseholders may be required to make additional payments to cover unexpected expenditure. Furthermore, if there are significant arrears in service charges this may contribute to serious financial problems for the OMC.

The MUD Act made significant progress in facilitating the fair, efficient and effective management of bodies responsible for the common areas of apartments. However, it is clear that this represents only the first steps, and if OMCs are to function effectively, many other issues need to be addressed.

Finally, it is important to remember that the challenges presented by the complexities of apartment living are not new.

"Residential condominiums probably will never fully replace traditional single-family homes. However, they have become important alternatives to home ownership in many parts of the country. Condominium ownership involves a person's exclusively owning an individual dwelling unit and sharing ownership of areas used commonly by all residents such as hallways, swimming pools, and parking lots. Unfortunately, this new and complex form of real-property ownership is not fully understood by people who buy condominium homes or by those who become involved in the governance of their condominium community" (Institute of Real Estate Management 1978)

This commentary was published by the Institute of Real Estate Management over 40 years ago in Illinois, Michigan, and remains relevant in Ireland today.

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Other jurisdictions

Ireland is not the only country to face these challenges; the complexities that are integral features of apartment living are experienced across the world as cities develop and tenures change. For example, they are evolving in former communist states, where it is acknowledged that *"some degree of co-operation and collective action is required that entails complicated arrangements...using dual systems of ownership where private ownership is fused with common property ownership"* (Hrast & Mandic 2018).

In Section 3 of this report practices in four jurisdictions are reviewed: Finland which offers a different approach; the UK which struggles with its legacy of land ownership and perpetual ground rights; and Australia and Canada, both of which addressed this matter in a robust and forward thinking manner several years ago, with Australia's (New South Wales) model copied in Dubai and Singapore. As may be seen in Figure 1,

/ In Section 3 of this report practices in four jurisdictions are reviewed: Finland which offers a different approach; the UK which struggles with its legacy of land ownership and perpetual ground rights; and Australia and Canada, both of which addressed this matter in a robust and forward thinking manner /

of the EU28, Ireland has the lowest proportion of its population living in apartments. It is essential that the issues around MUDs be tackled robustly as the sector enters the next phase of expansion.

Reviewing the regulatory environment for developers and OMCs in other countries, and the level of recognition the sector has attracted in the interest of consumer protection, it is clear that Ireland is behind the game; not only in its protection of apartment owners and occupiers, but in its approach to a coherent policy for housing, to its delivery, and to the end users.





OMC directors, elected from the body of members and home owners, are volunteers



2 /

Research Aims and Methodologies

Research Aims and Methodologies



There are **200,000** apartments in Ireland according to the 2016 Census

Research aim

The primary research objective is as follows: in light of the rapid growth in the number of OMCs and the operation of the MUD Act, to examine and assess the performance of OMCs, and to make recommendations.

It is important to note that there are significant difficulties associated with some data collection. For example, it is not known exactly how many OMCs there are in the State. Data on other related issues from different sources appear to be contradictory, (2016 Census puts the number of apartments in Ireland at 200,000, with GeoDirectory indicating that there are 180,741 in total by Q2 2018, suggesting a 10% decrease between 2016 and 2018). Taking the rise in the PRS, and the increased amount of development by AHBs, it is also difficult to determine how many apartments built since the financial crisis are in MUDs, be that in fractional ownership requiring an OMC, rather than a multi-family investment, or in social housing developments, where the entire building is in single ownership and an OMC is not required.

It was clear from the outset that there is a severe lack of data gathered in respect of OMCs and their function. There are conflicting statistics on the size of the sector, in both number of units and size of population living in MUDs. This could reflect that, while for many reasons successive Governments have

encouraged apartment living, there has been little focus on the enjoyment and success of apartments after they are occupied and sold.

Methodology

The methodology employed was agreed with the Research Steering Group consisting of the lead researcher Paul Mooney, Simon Brooke (Head of Policy, Clúid Housing), Roslyn Molloy (Researcher, Housing Agency), David Silke (Director of Research and Corporate, Housing Agency), and Brian O'Gorman (CEO, Clúid Housing).

It was agreed from the outset that the data obtained would be qualitative-based rather than widespread quantitative research. The agreed methodology was as follows;

1. **To identify and interview relevant stakeholders** in the OMC sector, including representatives of Government (local authorities, policy makers and civil servants), Industry (architects, planners, developers, solicitors, etc.) and Users (directors, members and residents of OMCs, management agents, AHBs, etc.).
2. **To prepare broad interview questionnaires** for use in interviews so as to allow the interviewees' opinions to develop.
3. **To ensure that the interviews would not be onerously structured** to allow discussion and elaboration on relevant themes.
4. **To encourage discussion, debate and deliberation** in focus group environments with stakeholders.
5. **To develop more structured questionnaires** for use in case studies, to enable analysis.
6. **To research examples of how the sector performs** in other jurisdictions.

/ It is important to note that there are significant difficulties associated with some data collection. For example, it is not known exactly how many OMCs there are in the State. Data on other related issues from different sources appear to be contradictory /

7. To carry out a stakeholder seminar following the draft of the original recommendations.
8. To deliver the final report and recommendations.

Data gathering and review

International documentation review

The lead researcher identified four countries to research, for various reasons, from proximity and similarity to the culture and legal system of Ireland, to best practice examples. Legislation, tenure systems and housing cultures were examined in each of the chosen jurisdictions, with many recommendations coming from examples of action by governments overseas.

Semi-structured interviews with stakeholders

A semi-structured interview template was developed for each category of stakeholder, designed by the lead researcher and approved by the Research Steering Group. This allowed exploration of some of the key areas in more detail, depending on the particular viewpoint and role of the stakeholder interviewed. Interviews were carried out over a number of months and were not restricted in time.

Structured focus groups

Focus groups were established with the assistance of the Apartment Owners' Network and Clúid Housing. Structured questionnaires were developed, and all participants answered confidentially. Following the completion of the questionnaire, the relevant topics were elaborated on by the researcher to examine and challenge the opinions of the participants.

Case studies

Three OMCs volunteered to participate in door-to-door interviews conducted by the research team. Questionnaires

/ Three OMCs volunteered to participate in door-to-door interviews conducted by the research team. Questionnaires were developed to measure the happiness of residents with their living environment and to interrogate their knowledge of the OMC structure /

were developed to measure the happiness of residents with their living environment and to interrogate their knowledge of the OMC structure.

Stakeholders' seminar

Following the qualitative and literary research, the research group convened a stakeholders' seminar to present the draft recommendations of the research. A number of stakeholders were invited from Government, Industry and User categories, and the draft recommendations were presented and discussed.

Structure of the report

Based on the data collected and reviewed, and drawing on the lead researcher's own experience in the OMC sector, this report has been prepared for publication and presentation to Government. The objective is the implementation of the recommendations by way of primary legislation.

Chapter 2: Introduces OMCs in Ireland, their evolution, the size of the sector, the key stakeholders, structure and shortcomings. It offers some background to the introduction of the MUD Act and its purpose. It details some of the topical issues around OMCs, such as sinking funds, funding service charges, and the legacy of self-certification and building defects.

Chapter 3: Introduces international comparisons of multi-owned housing in the UK, Finland, Australia and Canada, illustrating the size of the sector in these countries. It documents the manner in



which issues similar to those in Ireland were tackled through early government intervention and legislation.

Chapter 4: Sets out the research findings based on in-depth interviews, focus groups and surveys of three apartment developments. Interviews were conducted with key stakeholders from policy and law makers (Government and State bodies), designers and providers (industry stakeholders) and civil society (apartment dwellers and owners, property managers and advisors). Interviews sought to identify the attitudes towards the sector and identify shortcomings and potential solutions.

Chapter 5: Sets out the recommendations in summary and detail, together with the objective of each recommendation.

Chapter 6: Concludes the report.

A background image showing a man and a woman in a meeting, with a teal overlay. The man is on the left, looking down at a document, and the woman is on the right, looking at him. They are both wearing business casual attire. There are white mugs on the table in front of them.

Interviews
sought to identify
the attitudes
towards the sector
and identify
shortcomings and
potential solutions



21.4%

of Dublin's residential stock
is apartments (74,327 in the
last Census)

3 /

Owners' Management Companies in Ireland

Owners' Management Companies in Ireland

Addressing a well-attended public seminar on OMCs, organised by the Law Society, in Blackhall Place during the property boom of the mid 2000s, a prominent law professor proclaimed that whoever came up with the concept of an OMC and long leasehold titles to create equitable title for apartment ownership was a genius.



7.3% of our population live in apartments, 52.4% in semi-detached houses, and 40.1% in detached houses

In 25 years of practice, this author is inclined to agree that the concept, intention and structure is equitable, fair and democratic; it fails only when abused, misunderstood or ignored.

The Evolution of OMCs

The OMC structure has been in place since the early 1970s, when long leasehold apartments were first sold and operated with success. In most circumstances, the demographic of ownership was split between mature residents trading down, individual owner-occupiers, and small holding landlords. In their early days, apartments were not a “foot on the property ladder” product for young couples or families, and they were certainly not promoted for long-term family living. Playgrounds were not provided, and “no ball games” signs were the norm in landscaped areas. There were higher levels of owner-occupancy, and standards were service-driven rather than cost-driven.

By the 1980s, new generations of owners started buying apartments.

The introduction of tax incentives for private rental sector properties led to large-scale apartment development. This was followed by the urban regeneration incentives of the 1990s, including Temple Bar, the IFSC, Smithfield, and other central locations, where tax relief was offered to landlords investing in property. Addressing suggestions that first-time buyers and potential owner-occupiers were being priced out of the market by landlords, restrictions were introduced limiting the number of tax relief properties and investor purchasers. This introduced a new generation of owner-occupiers exposed to the OMC structure.

It was clear from the early 1980s that development of apartment buildings was not simply a more profitable use of land but also something that central government and municipal councils promoted for sustainable growth of our cities, to avoid urban sprawl. It was a tool for urban regeneration and re-invigoration of our city centres, making them more vibrant, cosmopolitan and safer. It also relieved local authorities of considerable responsibility for providing services to housing estates and areas to be taken in charge, with the creation of private common areas under the ownership of OMCs now becoming a private matter. Given our local authorities' experiences in the management of common areas of public

/ It was clear from the early 1980s that development of apartment buildings was not simply a more profitable use of land but also something that central government and municipal councils promoted for sustainable growth /

multi-storey apartments, it is difficult to understand how the private sector was not only allowed to evolve with its own structure of ownership but that it took so long for Government to address such an important issue. Guidelines for Planning Authorities, published in 1999, suggested that *"an increasing number of residential schemes have been privatised and are maintained on a permanent basis by management companies"* and that these *"will not be restricted to inner suburban/city centre locations"* (Department of Environment, Heritage and Local Government 1999). This indicates that the evolution of high-density housing has been part of our Government housing strategy for 20 years, and that there was never an appetite to put a robust structure for its operation in place.

OMCs began to come to the attention of local authorities in the mid-2000s, as their ownership in OMCs increased (due to Part V acquisitions), and more and more owners approached their councils to complain of issues within their own OMC. Much of this was focused on new developments, where control had not passed to the unit owners, where there were building defects, and where many first-time owners of apartments were realising the costs and prohibitions associated with apartment ownership. This coincided with the economic crash, which put many of the same OMCs under financial hardship as service charges became even more difficult to collect.

The ownership structure in MUDs is complex and does not have any simplistic solutions, and this is evidenced by experiences overseas. The Irish system of fractional ownership, or co-ownership, was created by private sector developers and their legal advisors, using their own initiative. It established a beneficial ownership and tenure structure that would deliver value to the unit owner and provide security for mortgages, thereby creating a product that could be sold at a profit

on the open market similar to other property models.

The size of the OMC sector

It is difficult to determine the size of the OMC sector in Ireland. As suggested earlier, data can be contradictory, and there do not appear to have been attempts in the past to collate such data.

The definition of an apartment is a dwelling which exists in a building of five or more dwellings. The 2016 Census confirmed that there were approximately 200,000 occupied apartments in Ireland (CSO 2018). Eurostat figures referring to 2016 suggest that just 7.3% of our population live in apartments – compared to semi-detached houses (52.4%), and detached houses (40.1%) – the lowest percentage of apartment dwelling in Europe (Eurostat 2018).

According to GeoDirectory (2018), 9.1% of residential stock is apartments, with 180,741 apartments in total. In Dublin, 21.4% of residential stock is apartments



It is difficult to determine the size of the OMC sector



/ In simple terms, the OMC is the glue that binds together the separate interests held by owners of property, where there are shared structures or services that cannot be provided individually or separated from each other /



90,000 extra apartments will be needed in Dublin to meet population growth in the next 20 years



74% of Europe's population is urban (UN DESA 2018)

(74,327 in the last Census), representing a significant share of the national apartment stock.

The number of apartments has increased by 85% since 2002. The National Planning Framework anticipates an increase in population of 25% by 2040 (Government of Ireland 2018). 50% of new housing is to be provided within the existing footprint of our cities, to accommodate an increase in population of 20%. It follows that we will need to provide accommodation for 145,000 people within the existing footprint of Dublin City, which will either require more efficient land use or the development of existing open spaces. More efficient land use is achieved through high-density housing, which will mean a significant increase in apartment buildings and managed environments, or around 90,000 extra apartments within the next 20 years – more than doubling Dublin's current apartment stock.

The world is becoming more urbanised and the rate of migration to urban areas is increasing. In 2007 the United Nations Population Fund confirmed that, for the first time, global urban population exceeded rural (UNPF 2007). It was anticipated then that by 2030 80% of Europe's population would live in urban areas (Dupuis 2010). On 16 May 2018, the United Nations Department of Economic and Social Affairs confirmed that Europe had reached an urban population of 74% (UN DESA 2018).

The sector may also be viewed from an economic generation perspective. In the most simplistic terms, an average service

charge for an apartment, nationwide, of €1,500 per annum is suggested. On this basis, the view could be taken that cumulative OMC turnover is in excess of €270m. Almost all of this income is re-invested in electricity charges, insurance, management fees, gardening, cleaning, waste management services, building contractors and other trades. OMC trade is an important factor to many small companies and professional service providers in the country.

OMC structures

An OMC is “the owner of the common areas of a multi-unit development”, where a MUD is “land on which there stands erected a building comprising a unit or units.... that amenities, facilities and services are to be shared” where there is not less than five residential units (Section 1, MUD Act).

In simple terms, the OMC is the glue that binds together the separate interests held by owners of property, where there are shared structures or services that cannot be provided individually or separated from each other. In an apartment block the concept is easily illustrated, as apartments on the second floor cannot exist without the structural support of those beneath, and those beneath are not watertight without those above providing their roofs. This is over-simplified, but other interrelationships follow; be they the shared structure, hallways, lifts, roofs, foundations and other building fabric common areas, or the shared facilities or services associated with the building and its occupation.

The Law Reform Commission report on MUDs published in 2008, noted that difficulties arose from “a combination of two factors; poor governance arrangements, in which some developers retained inappropriate control over MUDs and an understanding deficit among apartment purchasers who seemed to be unaware of

the consequences of buying an apartment in a development by contrast to buying a single house" (Law Reform Commission 2008).

The legal framework for this is complex, as is the equitable recovery of the costs associated with management, maintenance, administration and other relevant costs.

In Ireland, the structure that evolved was the use of a company to hold the reversionary or freehold of the land and building, with unit owners becoming members and collectively the owners of the company. Following the transfer of the freehold to the company by the developer, the company becomes the lessor to each of the leases granted to the unit owners, typically under 999-year leases.

The legal framework sought to create a structure where the owners are collectively empowered to operate the common parts, and determine services concurrently with their individual interest in the unit. In its correct use, it is transparent, inclusive, democratic and equitable. Issues escalated in the mid-2000s when apartment development accounted for approximately 25% of housing output and developers were slow to deliver control and pass legal title to OMCs. This undermined the ability of owners to have control over their MUD through their OMC. It left the delivery of services, service charge level determination, and overall management strategies to developer-appointed management agents, or the developer themselves.

The significant majority of OMCs avail of the "limited by guarantee" type of limited liability company, i.e. the Company Limited by Guarantee (CLG). This entity is typically used for "not-for-profit" companies, which OMCs are. Unlike companies limited by shares, CLGs allow for unlimited membership, without attracting additional company reporting responsibilities. CLG

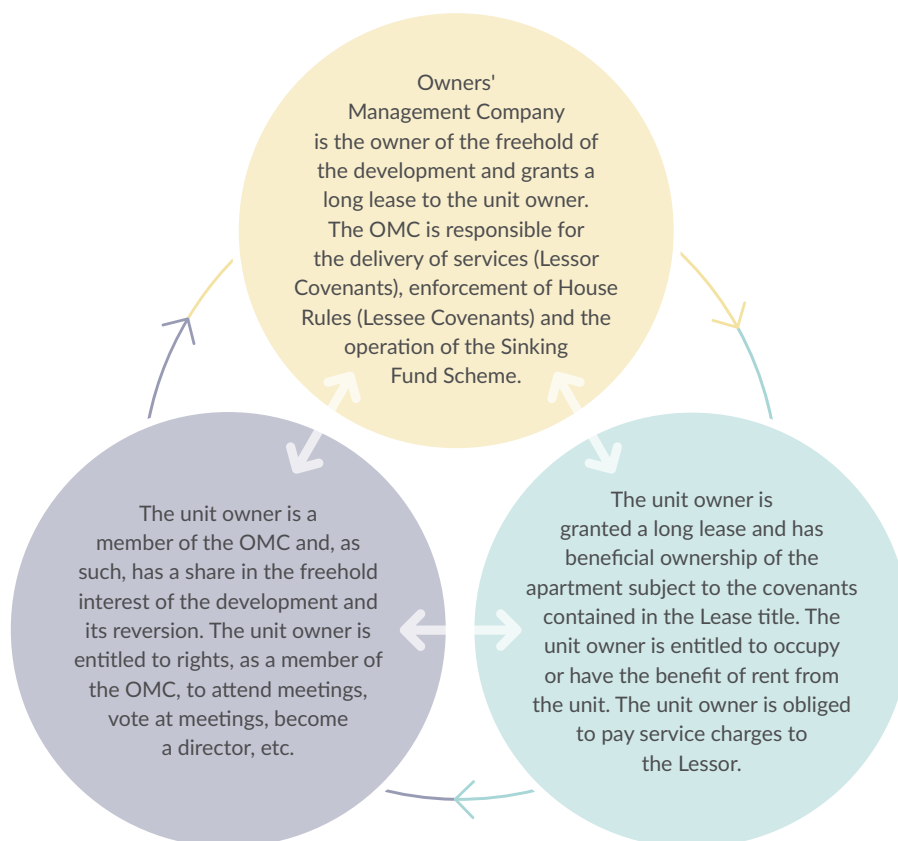
membership, unlike a shareholding in private limited company, is easily transferred with the ownership of the property, without the need for transfer documents. The owners' register is also the OMC members' register for Company Law purposes.

Until the recent Companies Act 2014, CLGs could not avail of audit exemption. An audit exemption may deliver a cost saving to an OMC, however it could be argued that the audit offered comfort to the members, in that their auditor had certified the accounts. This is an appropriate approach for not-for-profit companies where the directorships are voluntary. OMC boards should also be aware of specific requirements under their own leases and constitution regarding the certification of annual accounts.



Estimated cumulative OMC turnover is in excess of €270m

Figure 2: The circular structure of the OMC



Source: Paul Mooney

/ The MUD Act requires OMCs to produce annual reports and present service charge budgets to their members for approval. The Act empowers OMC members to influence the service charge levels, the type of services provided and to understand the relationship between the two /

The power of OMCs is designed to lie with the membership. The membership, in turn, empowers elected directors (usually from their membership) to oversee and manage the company in the interests of all members. The directors often delegate a number of important tasks to a management agent, with the delegated authority varying from company to company.

The documents that deliver specific detail on the obligations of the OMC and its members are the company constitution (memorandum and articles of association), and the title of the property, which evidences the tie between property ownership and membership of the OMC. This usually takes the form of a long leasehold, however in housing estates title may be in the form of a lease of easements, or through reciprocity of covenants on freehold title (Section 48, Land and Conveyancing Law Reform Act 2009).

The empowerment of the members is manifested in the annual general meeting, which under company law (Section 175, Companies Act 2014) and the MUD Act (Section 17) must be held each year. There are strict AGM agenda items detailed in statute, and further requirements are implied in the MUD Act. Precedent company constitutions for MUDs that reflect the requirements of the MUD Act are in common use. These constitutions include many standard requirements, such as the rotation of directors, and that they should resign and seek re-election (if desired and eligible), rather than remaining on the board in perpetuity without challenge.

The MUD Act requires OMCs to produce annual reports and present service charge budgets to their members for approval. The Act empowers OMC members to influence the service charge levels, the type of services provided and, importantly, to understand the relationship between the two.

Shortcomings of the OMC structure

The democratic and equitable legal structure of OMCs; empowering the home owners and their directors, is also one of its significant flaws. Directors, elected from the body of members and unit owners, are volunteers. They often have little experience of the complex nature of management companies and MUDs. The board of directors, with no training, becomes responsible for the management of complicated multi-million euro properties, involving many technical and expensive facilities. Boards of OMCs often become over-dependent on management agents or a small number of directors for guidance and influence in decision-making.

Being a director of an OMC is often a thankless and time-consuming task that, at best, is taken up by civic-minded unit owners and, at worst, by individuals pursuing personal agendas.

Often, focus is placed on saving money and micro-managing parochial issues. This can be at the expense of good corporate governance, sustainable financial models for service charges, and planned maintenance of the building's fabric and facilities. A board can risk failing to invest in specialist advice to inform it of strategic management moving forward and the establishment of a sinking fund. All of this is in the context of keeping the unit owners and members informed and happy within their built environment.

MUD Act

The enactment of the MUD Act was a result of focus on the sector, first addressed by Evelyn Hanlon of Dublin City Council in the publication of "Successful Apartment Living" (Hanlon 2006 and 2007). This was quickly followed by reports issued by the National Consumer Agency and the Law Reform Commission, and the establishment of the Apartment Owners' Network.

It was clear that the growth of apartment ownership and the changing demographic of OMC members were creating problems in the management of MUDs. Issues ranged from abuse by developers retaining control of OMCs, to underfunding of service charges, building defects, oppressive directors, and ineffective agents. Ultimately, much of this was captured in what was referred to by the

Law Reform Commission as the "understanding deficit".

The overarching pieces of legislation that OMCs must comply with are the Companies Act and the MUD Act. It is from both Acts that directors may take guidance and instruction regarding their duties, and that members may understand the extent and nature of their rights.

Table 1: Summary of Multi-Unit Developments Act 2011

Issue	Section	Summary
Application of Act	2	Details the intention of the Act to include mixed-use developments and the relevant sections for them
Conveyance of common areas	3, 4 & 5	Requires developers to convey reversionary interest on all developments completed or in construction and future developments
Transitional/development period	6, 7, 9, 10, 11, 12 & 13	Obliges the OMC to join in additional purchases and the developer to complete the development and other issues around the phased completion of a development
Automatic transfer of membership	8	Confirms the connection between membership/shareholding of OMC and unit ownership
Voting rights and OMC structure	14 & 15	Confirms voting rights at one vote per unit and the inclusion of words "Owners' Management Company" in the registered name of all new OMCs
Directors	16	Confirms requirement for retirement and re-election of directors every three years
Annual meetings and reports	17	Details requirements for AGMs and the production of an Annual Report in addition to Financial Statements
Annual service charges	18	Requires the OMC to approve service charge budgets at a general meeting prior to issuing any demands
Sinking fund	19	Obliges the OMC to create a sinking fund and detail how it should be agreed at a general meeting each year
House rules	23	Empowers the OMC to create legally binding house rules at a general meeting of owners
Dispute resolution and rehabilitation of OMCs	24, 25, 26, 27 & 28	Encourages disputes in OMCs to be referred to mediation, and empowers the courts to alter OMCs for specific purposes
Restoration of OMC to company register	30	Enables an OMC to be restored to the company register on certain conditions
Transfer of guarantees and documents	31	Obligation on developer to transfer guarantees and warranties, together with all relevant building and management company documentation
Restriction on contracts	32	Restricts the OMC from entering into prohibitive contracts

/ The board of directors, with no training, becomes responsible for the management of complicated multi-million euro properties, involving many technical and expensive facilities /

The MUD Act dealt with a number of important issues, including the transfer of power to the unit owners through the requirement to convey the freehold or reversionary interest of the long leaseholds to the OMC. The Act put in place a framework for the transfer of key documents, warranties and guarantees, together with certificates of compliance. It did fall short on building control issues, such as requiring developers to complete developments to a particular standard, and to provide comprehensive latent defect insurance. This occurred simply because it was the then Department of Justice, Equality and Law Reform, and not the then Department of Environment and Local Government, that was legislating.

MUD Act – commentary

The Act was written in the context of empowerment of OMCs and their members; the unit owners. The obligation to convey the reversionary interest, and other requirements regarding membership and directorships, meant that the abuse of the system by some developers could be overcome. It was unfortunate that the legislation was introduced during the economic crisis when development companies were failing on a regular basis. The choice left with OMCs was simply to accept title as it was delivered, rather than being able to rely on legislation for anything more robust by way of handover.

The sections of the Act dealing with the operation of the OMC offer guidance on the company structure, requirements regarding meetings, service charge budgets, annual reports, house rules, and a requirement to introduce sinking

funds. As a piece of civil legislation, it does not impose fines or penalties for breaches, or introduce any form of regulation. This was not unintentional and follows the democratic ideology of OMCs, in that the Act empowers unit owners to call their own OMC to task over breaches. The Act enables owners to take action for damages against the OMC in the event that they are at a personal loss.

A shortcoming of the legislation was that it did not sufficiently empower the OMC in its relationship with the unit owners. OMCs continue to rely on the covenants and obligations in lease documentation for enforcement against unit owners in relation to service charge recovery, enforcement of house rules, alterations to the property, and behaviour interfering with co-owners' quiet enjoyment. The only recourse on these matters is through the courts, and this is costly and time consuming. It could be argued that the requirement in the Act (Section 24) for mediation reduces the power of the OMC and encourages compromise. This favours the individual unit owner in breach over the collective unit owners seeking to enforce. Breaches of lease covenants are often black and white and, while there may be some mitigating circumstances, these should not dilute the power of the OMC.

The Department of Justice Equality and Law Reform, again, showed their support and understanding of the sector by making service charge debt capable of being excluded from personal insolvency arrangements at the discretion of the OMC (Personal Insolvency Act 2012). This approach recognises that service charge defaults ultimately increase the costs for compliant, paying unit-owners, and interfere with their enjoyment of the full suite of services to their homes.

It is not clear why the MUD Act was the responsibility of the Department of Justice, Equality and Law Reform, as it would have been better suited

to a Government department with responsibility for housing. First published as a Bill in May 2009, it was enacted in January 2011, immediately prior to the collapse of the Cowen Government. Thanks to the open-mindedness of Seamus Carroll, assisted by Michael Holohan of the Department of Justice, Equality and Law Reform, a forum was established including the Apartment Owners' Network, Irish Property and Facility Managers' Association (now incorporated into the Society of Chartered Surveyors Ireland), Construction Industry Federation, Law Society, Royal Institute of the Architects of Ireland, and Engineers Ireland. This forum contributed to the legislation over a period of just under two years.

Topical issues

The sinking fund time bomb

The MUD Act requires each OMC to create a sinking fund within three years of the development being completed, or within 18 months of the date of commencement of the relevant section (Section 19) of the Act, i.e. by October 2012.

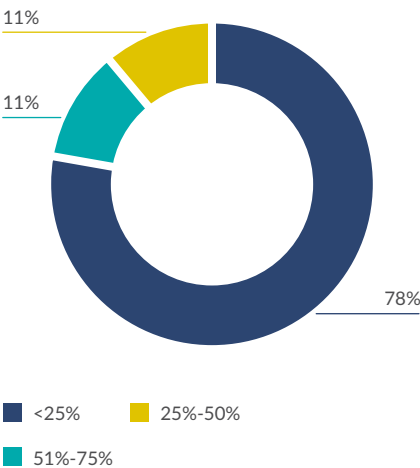
The Act detailed that the fund is to be created to discharge expenditure reasonably incurred on refurbishment, improvement, maintenance of a non-recurring nature, or advice relating to such expenditure. It also required the sinking fund contribution to be approved at a general meeting of owners, otherwise the amount levied shall default to €200 per unit (Section 19(5)).

The phraseology used in Section 19(5) has led to considerable confusion as to how sinking fund contributions are levied, as the section suggested an equal rate per unit, instead of acknowledging obligations based on lease covenants.

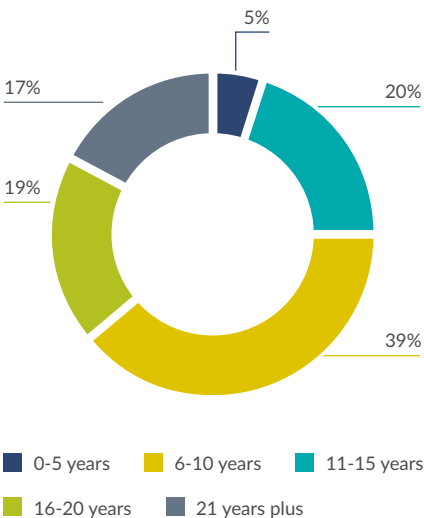
The purpose of sinking funds is often misunderstood. Many believe that

Figure 3: Society of Chartered Surveyors Ireland 2018

Percentage of agents – Reporting inadequacy of sinking funds



Age of MUDs surveyed



they are for the decoration of common areas and lift replacement; few people think of the fabric of the building, and all renewable/perishable parts during its predictable lifetime. Without being exhaustive, this includes mechanical and electrical plant and equipment (lifts, main electrical panels, life safety systems, lighting, water pumps, etc.), roofs, fall arrest systems, external cladding and facades, common area glazing, ironwork and metalwork, tiles, floor coverings, roads, landscaping, water features, ventilation systems, water tanks, together with internal and external decoration.

Sinking fund levels should be determined by ascertaining the useful life of each of the perishable/renewable facilities enjoyed by a MUD, and estimating the cost of replacement at the year of replacement. The costs of each element should be combined and equalised as much as possible over an agreed period – usually between 20 and 50 years – with an annual amount to be set aside calculated. This annual amount is then levied in accordance with title provisions following its approval at a general meeting of owners.

/ The purpose of sinking funds is often misunderstood. Many believe that they are for the decoration of common areas and lift replacement; few people think of the fabric of the building, and all renewable/perishable parts during its predictable lifetime /



78% of agents surveyed said less than 25% of MUDs have adequate sinking funds

In a recent SCSl publication 86% of MUDs surveyed had not prepared a Building Investment Fund report, with 78% reporting that sinking fund levels were inadequate (Society of Chartered Surveyors Ireland 2018).

The repercussions of inadequate sinking funds are two-fold. In the first instance, failure to plan is realised when a part of the building fails and requires immediate replacement, and funds are not available. This requires immediate action, with the OMC convening a general meeting to agree a levy to fund the replacement. Prudence would suggest that the OMC should not pursue or order the replacement works until such time as funds are available, in which case there may be considerable disruption.

Taking the circumstances of a lift replacement as an example, a planned lift replacement will typically require a payment of 30% on order, with an order period of eight weeks. Installation of the lift will take a further six weeks. Convening the general meeting and collecting at least 30% of the cost will take not less than three weeks. This would result in a minimum down-time for the lift of 17 weeks, as opposed to six weeks when planned and properly funded. Realistically, the unplanned lift replacement with no funds available will take approximately six months from breakdown to a new lift being installed. As most Irish apartment buildings are serviced by a single lift, this could leave those that need it the most in severe difficulty.

Alternatively, an OMC, realising that it does not have an adequate sinking fund, can start collecting funds at a faster rate, to make up for previous years of lower or non-contribution.

It should be noted that there is an equity in sustaining an even sinking fund contribution in the context of the transfer and sale of apartments. The sinking fund should be built up from

the outset as the building is used by its owners. This means that the user or owner contributes towards the wear and tear of the common areas and building fabric as they use it, rather than leaving future owners to pay for past users' enjoyment. Consider buying a property requiring refurbishment; the price is discounted based on the level of investment required to bring it to a desired standard. Similarly, in a mature and discerning market one would expect that property values in a MUD with a poorly funded OMC would be discounted by the level of perceived levies required to bolster the OMC sinking fund levels.

The elephant in the room with sinking funds is not their inadequacy or the expected draws on funds due to those items allowed for in the MUD Act, but rather the draws on owners' funds to fund the remediation of building defects. The legacy of self-certification and poor building practices up until 2014, but substantially until 2008, is a cost that no owner would have expected to have to fund. These are not items of depreciation or wear and tear, but are costs incurred due to the failure of others to deliver to the standard to which they were obliged and contracted. Many of these failings are discovered too late, and are not covered under any structural guarantee or warranty.

Funding Owners' Management Companies – service charges

OMCs are entirely reliant on funding from their members via an obligation in their title documents to pay a "service charge" in order to fund the financial commitments of the OMC. This requires OMCs always to be in funds, and for each member to trust the OMC to provide services by paying in advance of the delivery of service.

OMCs should not contract for the delivery of services if they are not confident that they will be in a position

to pay. To do so could be considered reckless trading by the directors, and could create a situation where the directors become personally liable for the OMC debt.

The service charge scheme was greatly improved by the MUD Act. Annual service charge budgets must now be approved at a general meeting of owners. This has enhanced transparency and service charge collections.

The service charge scheme

A significant feature, and a repeatedly contentious issue with unit owners, is the payment and fixing of service charges. Service charges are the fees levied on each unit owner in order to fund the provision of services to the MUD. Service charges are payable in advance, usually annually, following the approval of a budget at a general meeting of owners.

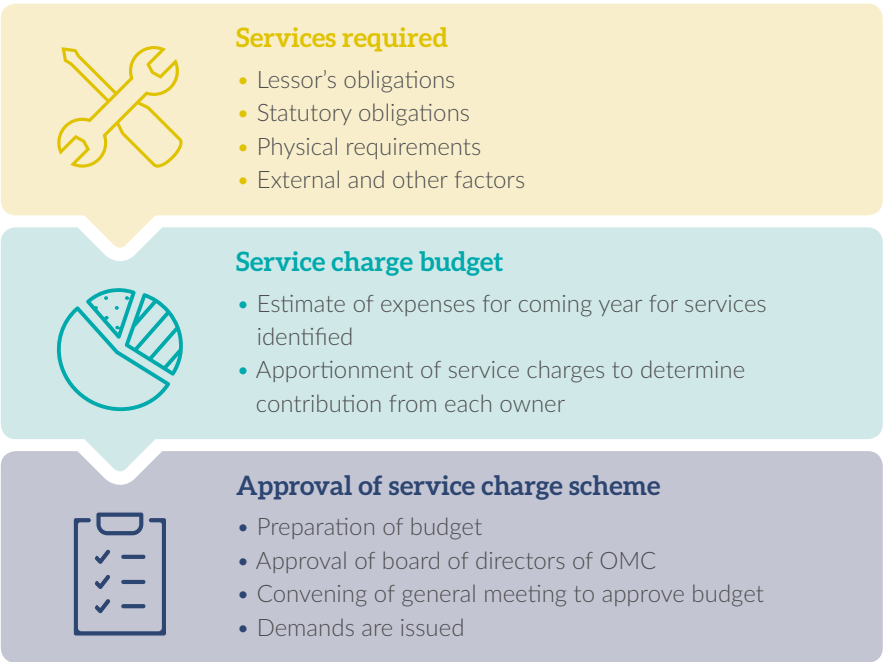
Service charge collection, remains a significant task for any OMC and property management agent. As each OMC is an individual legal entity, it must manage its own financial records, no matter how large or small it is. This means that each OMC must operate its own bank account for lodgement of service charges and payment of accounts. It must maintain individual accounting records for the company and each of its members. It must raise charges in accordance with the MUD Act, and maintain records in accordance with its obligations under both lease title and the Companies Act.

Convenient and robust methods of cash collection, such as direct debit and laser/ credit card, are not available to most OMCs. This is because banking systems are not designed for small entities; banks require large turnovers before agreeing such collection methods. As a consequence, OMCs are required to trust their funds to management agents, who carry out collection functions on their behalf.

Significant time is taken by agents and OMCs to keep proper books of account, manage cash flow and keep service providers paid and willing to work. Collection of service charges is very often overlooked as being one of the most important functions of the OMC, and it is frequently regarded as the least enjoyable and the most difficult function. As somebody involved in teaching property management, the author does not teach debt collection, but does spend significant time on debt collection in his work. Without funds, OMCs fail. While the MUD Act did refer to collection of service charges and obliged unit owners to pay, did it go far enough? Could it have gone further? The categorisation of service charge debt as excludable under Personal Insolvency legislation was a material

/ A significant feature, and a repeatedly contentious issue with unit owners, is the payment and fixing of service charges. Service charges are the fees levied on each unit owner in order to fund the provision of services to the MUD /

Figure 4: The service charge scheme



/ When service charges are not paid by one member of the OMC, it is the other members who fund the default. When service charge debts are written off, it is other members who pay for that write off /

recognition of the injury that non-payment of service charges causes. This treatment acknowledged the collective nature of service charge and sinking fund schemes.

OMCs differ from most trading companies. Commercial companies operate in an environment of risk – the entrepreneurs creating start-ups take risks for reward, and those risks include the risk of non-payment. Risk is something that is factored into each commercial entity, and reward or profit is often correlated with the level of risk. This is where OMCs are different. An OMC has a fixed customer base – its membership or unit owners. It must present a budget for expenditure to its customer base for approval each year. It will also show the proposed contribution payable by each of its members. There is no room for reward or profit; there is, however, room for default and the risk of insolvency.

When service charges are not paid by one member of the OMC, it is the other members who fund the default. When service charge debts are written off, it is other members who pay for that write off. Essential services are funded by those unit owners who pay promptly and in full. The cumbersome legal process taken

to pursue service charge debt, and the difficulty in persuading courts to penalise defaulters, by allowing costs and interest charges, almost rewards debtors for non-payment. Property title, in the form of leases, for units in OMCs usually includes provision for penalty interest on debts. This is to encourage unit owners to borrow from a bank at a lower interest rate in order to pay their service charge. It is a deliberate penalty designed for equity purposes, and yet is often dismissed by the courts as being punitive.

As part of a recent study on behalf of the Housing Agency, some 50 OMCs were analysed as part of a financial review. They were split into three categories; small being less than 30 units, medium being between 30 and 200 units and large being over 200 units. The review used the most recent accounts lodged with the Companies Registration Office, analysing the balance sheet to measure sinking funds, equity and solvency.

A sample of 50 OMCs was taken and further analysis carried out to determine the level of debt and, in particular, debt in the context of income. Data was available for 33 of the companies. See Table 2 for breakdown.

Table 2. Analysis of debtors to income in OMCs

Owners' Management Companies	Average Income per OMC	Debtors as a percentage of Income	Cash as a percentage of income
Small (less than 30 units)	€23,012	36.36%	46.86%
Medium (between 30 and 200 units)	€81,654	44.32%	115.09%
Large (over 200 units)	€514,230	66.99%	65.44%
Overall average	€238,953	52.04%	82.13%

Source: Paul Mooney analysis of CRO returns of 33 OMCs

As service charges are payable annually in advance, and the figures in Table 2 are taken from year-end accounts, it is surprising to see that the average debt at year-end runs at 52.04% of income, rising to almost 67% for larger developments. The reality is that in the 33 developments surveyed, the rate of debt as a percentage of income ranges from 0.51% (small OMC) to 298.55% (large OMC). Four OMCs had over one year's service charge income in debtors.

As suggested earlier, OMCs approve budgets based on expected expenditure. The above table demonstrates that there is a significant debtor issue with OMCs, but that they remain solvent and largely able to meet their liabilities. It follows that, either, sinking funds are not held in cash form but are tied up in debtors and works are being postponed as part of prudent cash flow planning, or else budgets have been inflated to allow for defaulting owners and delays in collecting service charges.

It is clear from the above that there is a culture in Ireland of non-payment of service charges. This not only impacts on each OMC's ability to fund its operations and sinking funds, but has a follow-on effect in that the OMCs are not in a position to procure loans from lending institutions. It could be expected that, in an environment where service charges were paid promptly and in full, banks and lending institutions would look more favourably on providing loans to OMCs.

The legacy of self certification

In 2008, apartment development accounted for 25% of new homes, or 12,811 units (Department of Environment, Heritage and Local Government 2008). From 2011 to 2017, a total of 6,603 apartments were built out of the total housing production of 53,578 homes; approximately 12% of new housing stock (CSO 2018). Since the introduction of the Building Control (Amendment) Regulations 2014

(BCAR), only 4,114 apartments have been developed in Ireland (CSO 2018). This leaves over 170,000 apartments developed under either the previous regulations introduced in 1992, or the bye-law system pre-dating the 1992 regulations.

The Building Control Act 1990 led to the introduction of "Opinions on Compliance", often mistakenly described as "Certificates of Compliance", but falling well short of certification standard. Opinions on Compliance were not developed by government or local authorities but were a mechanism developed to enable banks to satisfy themselves that buildings being sold provided good security. One would have thought that the certification of a new construction by an architect, engineer or surveyor would have delivered some comfort to the property purchaser that the property was completed in accordance with planning and building regulations. However, all that certification did was provide enough comfort to the lending institution that the title was good, and security was adequate. This comfort was bolstered by the introduction of various structural guarantee schemes. The wording of Opinions on Compliance was agreed by stakeholder organisations (except any representing those who intended to live in the buildings) to ensure that debt could be raised in order to allow the property to be sold.

As noted, the majority of apartment developments were built in the era between the Building Control Act 1990 and BCAR 2014. As such, they fall into a category of building that was reliant on application for a fire safety certificate prior to construction, approval by the local authority without inspection of the building, and without a requirement for certification at the end of construction. Where compliance reports were completed, many were reliant on supporting documentation from contractors. While fire safety certificate



6,603 apartments were built out of the total housing production of 53,578 homes (2011-2017); approximately 12% of new housing stock (CSO 2018)



There is a significant debtor issue with OMCs – the rate of debt as a percentage of income ranges from 0.51% (small OMC) to 298% (large OMC)

applications detailed the fire-stopping and early detection requirements for a building in accordance with Building Regulations, there appears to have been a significant shortfall in skills, understanding, and supervision when it came to construction, and fire-stopping in particular.

It is also significant that Opinions on Compliance for apartments were issued in respect of each individual apartment rather than the building. This led to a focus on surveys of individual apartments, to the exclusion of the

main structure and common areas. In 20 years of property management, the author has seen two "wrap-up" Opinions on Compliance for apartment buildings purporting to certify the entire building; one of these was for Longboat Quay, where significant remedial works were required to address fire-stopping, less than 10 years from completion.

Defects in Irish apartment buildings are not restricted to fire-stopping, but extend to roofs, windows, facades, and mechanical and electrical installations. Methods of construction are not scrutinised by planners or local authorities for longevity, resulting in poor standards of construction and ill-chosen materials.

Currently, much of the focus on building defects, and in particular, fire safety defects, has been on "Celtic

/ Defects in Irish apartment buildings are not restricted to fire-stopping, but extend to roofs, windows, facades, and mechanical and electrical installations /



Tiger” properties completed at the peak of the property boom, where the developer did not complete and hand over the property in a structured manner. It has been left to the OMC and receivers appointed over assets of bankrupt developers to identify and correct the defects. As insurers and conveyancers eventually become more diligent and concerned, they ask more questions. Surveyors completing pre-purchase surveys expand their brief to include inspections of common areas in apartment buildings (although too often assessments are not sufficiently rigorous). This is leading to the discovery of more and more defects in older buildings.

Much of our older stock of apartment buildings does not comply with modern building regulation or best practice, and on cursory inspection will not satisfy the most basic minimum standards.

The “Safe as Houses?” report of the Oireachtas Joint Committee on Housing, Planning & Local Government proposed recommendations to make the environment around apartment development more assured and robust for consumers. In addition, it recommended a redress scheme for owners of homes with latent defects, with a mission statement – *“Ordinary owners who purchased in good faith should not be liable for the costs of remediation caused by the incompetence, negligence or deliberate non-compliance of others”* (Joint Oireachtas Committee on Housing Planning & Local Government 2017).

Assessment of Multi-Unit Developments Act 2011

The MUD Act was enacted during the worst property recession experienced by the Irish nation. The legislation was not intended for recessionary times but as a roadmap for future development, and to correct the errors of the past in so far as possible. Though the timing of the legislation was imperfect, there are a number of positives to take from it. The obligation to convey the common areas to the OMC has regularised the control and ownership of a large number of OMCs, and corrected their precarious legal entitlements to enforce lease provisions. With the introduction of the obligation on OMCs to produce annual reports, the requirement for owners to approve service charge and sinking fund schemes, and legally binding house rules, the “understanding deficit” referred to in the Law Reform Commission report has significantly reduced.

The MUD Act was the first step taken by Ireland in its understanding and acceptance of fractional ownership, and in establishing the rights of collective ownership ahead of individual property rights. There has been little activity to determine the MUD Act's effectiveness for new builds. However, there is sufficient argument from the impact on existing OMCs and apartment stock to suggest that more robust legislation is necessary. This is in order to force the cultural attitude change required to make apartment living and ownership sustainable and enjoyable for all.



The MUD Act was the first step taken by Ireland in its understanding of fractional ownership



7.3%

of the Irish population lives
in apartments, the lowest
proportion in the EU

4 /

Literature Research – International Comparatives

Literature Research – International Comparatives

As outlined earlier, of the EU28, Ireland has the lowest number of apartment dwellers as a proportion of the population; the UK has the third smallest proportion. Ireland's position may not be a coincidence, and may be a legacy of British rule, and historical issues over land ownership.

As stated earlier in this report, fractional ownership and difficulties experienced in Ireland in MUDs are not new. In former Soviet countries, the entire housing system has been reformed over recent decades. Following the collapse of socialist regimes, formerly state-owned housing in multi-unit buildings has been converted to fractional ownership. In those countries it has been recognised that *“ownership of a single family house differs considerably from other forms of homeownership in which individual and common elements need to be distinguished and ownership also involves responsibility for common areas and facilities, to manage these common elements, some degree of co-operation and collective action is required that entails complicated arrangements”* (Hrast & Mandic 2018).

Looking overseas for best practice in this area of housing, it is important that we understand that Ireland cannot simply introduce widespread property, land and tenure law reform. We have current processes and precedents that work and, as suggested previously, an apartment tenure system that works when not abused, misunderstood or ignored.

Comparative case studies were chosen for a number of reasons; cultural similarities, geographical proximity, utopic ideologies and, ultimately, recent robust reforms that were retro-fitted into an existing property law environment.

Table 3. Summary of Comparative Countries

	Finland	United Kingdom	Australia (New South Wales)	Canada (Ontario)
Reason for choosing	Finland is regarded as having a well-rounded housing model where social, owner occupied, and private rental properties are well balanced. It has the lowest rate of severe housing deprivation in the EU (Housing Europe).	Our closest neighbour, with our property tenure system deriving from theirs.	Cultural similarities. Early identification of potential issues with Multi Owned Housing and early government intervention to shape the evolution of fractional ownership.	Cultural similarities. Recent robust reform to deal with increasing development. Introduction of robust legal structures and regulator to condominium associations.
Size of apartment sector	34.2% of population live in flats/apartments.	14.3% of population live in flats/apartments.	9% of population live in apartments.	13.3% of population live in apartments.
Tenure	Ownership is through company shares correlated to apartment size.	Leasehold interest for specific period. Various freehold ownership models. Older units have shorter leases with reversionary interest vested in ground landlord. Ground landlord retains significant rights.	Leasehold or freehold depending on type of <i>Strata Scheme</i> . <i>Strata Scheme</i> with a body corporate is similar to OMC structure.	Freehold or leasehold <i>strata title</i> , with an owners corporation similar to an OMC.
Legislation	First legislation introduced in 1926; most recent reform was Limited Liability Housing Companies Act 2009.	Common law evolution. A number of Acts to bring some leaseholder rights while preserving the long-term value for ground landlords.	First legislation in New South Wales in 1961, with most recent being the <i>Strata Schemes Management Act 2015</i> .	The Condominium Act was passed in 1998, with a review commenced in 2012 resulting in the <i>Protecting Condominium Owners Act 2015</i> .
Features	Prescriptive legislation regarding the operation of the corporation and the obligations of unit owners. Empowered owners' corporation when enforcing against members. All building defects are to be repaired free of charge.	No uniformity to the sector as ground landlords' perpetual interests are protected. Leasehold reform remains a topical issue in the UK. Management companies/landlords can avail of First-Tier Tribunal Chamber for dispute resolution, which is effective and cheap.	Very prescriptive and robust legislation designed to protect all "lot owners" and empower the owners corporation in enforcement and developer defects. Civil and Administrative Tribunal has jurisdiction over owners and owners corporation.	Condominium Authority of Ontario has been created to support condominium communities. Provides variety of services to include dispute resolution, director training and public information.

Source: Paul Mooney

Finland



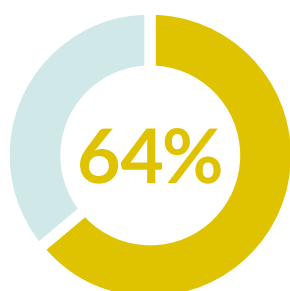
4.4 million
population



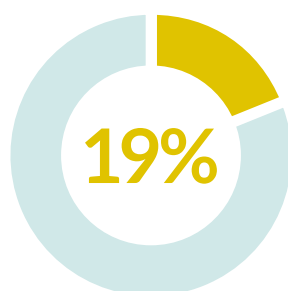
"Happiest"
country in
the world



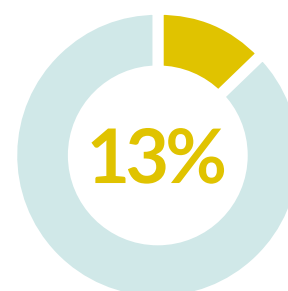
1926 saw the
first legislation
on multi-unit
housing passed



64% of housing is
owner-occupied
(Ireland: 67.6%)



19% live in private
rented accommodation
(Ireland: 20.6%)



13% live in
social housing
(Ireland: 8.7%)

Introduction

Finland, according to the recent UN World Happiness Report, is actually the "happiest" country in the world, assessed by reference to wealth, healthy life expectancy, political freedom, generosity, dystopia, and an absence of corruption (Helliwell et al. 2018). It also scored highest as happiest country for "foreign born" residents.

Size of sector

Finland is considered one of Europe's housing success stories but has a

population and housing profile not dissimilar to Ireland's. Of its population of 4.4 million, 64% of housing is owner-occupied (Ireland is 67.6%). 19% of the population lives in private rented accommodation (Ireland is 20.6%), and 13% lives in social housing (compared with Ireland's 8.7%) (Housing Europe 2017).

Finland passed its first legislation tackling multi-unit housing in 1926, and apartments or flats represent almost 34.2% of housing stock, compared to Ireland's 7.3% (Eurostat 2018).

Tenure

The ownership of MUDs is held by a housing company, with each shareholder holding shares that are specific to an apartment or unit. These shares entitle the shareholder to occupy or rent a specific unit within the housing company property. The number of shares held in the housing company corresponds to the floor area of the unit, which will correspond to voting rights and, typically, the contribution to service costs. Ownership of the building and facilities remains with the company.

The articles of association of the housing company govern the building, the company's obligations, and the rights and obligations of the unit owner/shareholder. The obligation to pay towards the operating costs of the company is detailed in the articles of association. The shares in the company are considered the personal property or asset of the shareholder, and may be sold freely or used as collateral for a personal loan. Individual shareholders are not personally liable for the company's obligations. Housing companies may borrow against their real property to finance modernisations or renovations to the buildings.

The Limited Liability Housing Companies Act 2009 requires shareholders to discharge all liabilities of the company through management charges calculated in accordance with the articles of association (Ministry of Justice, Finland 2012) . This provides what is, in essence, a shareholders' guarantee. The legislation is detailed, and marries company law with the structures around individual and collective ownership.

Rights and obligations of unit owners/shareholders

The structure of housing companies is similar to many company structures; the shareholders' meetings are used

to elect and authorise a supervising board, and to mandate that board to make decisions on shareholders' behalf. Shareholders use voting rights to decide on matters of importance, including the approval of the annual budget and setting of a management charge. The charge is typically relative to the floor area of each unit, but may be charged equally if expenditure is deemed of equal worth to each unit.

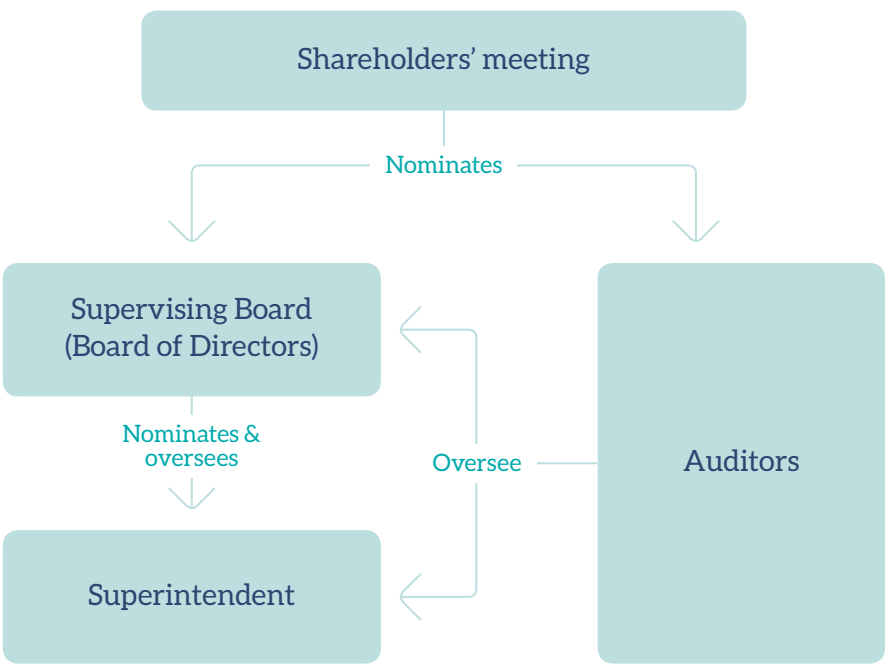
Housing companies engage auditors to work on behalf of shareholders. The auditors oversee the board of directors, and any agents engaged by the board.

Where a shareholder does not pay their management charge, the housing

/ Finland passed its first legislation tackling multi-unit housing in 1926, and apartments or flats represent almost 34.2% of housing stock, compared to Ireland's 7.3% (Eurostat 2016) /

Figure 5: Housing Fund of Finland (2005)

Administrative structure of a housing company



/ There are clear protections and supports for property purchasers. These include a duty to disclose on owners selling property, and a robust defects liability process for the sale of new apartments, including a one-year defects inspection /

company has the power to evict the shareholder. This allows the company to lease the dwelling, and collect unpaid management charges by way of rent. Similarly, if the behaviour of the shareholder constitutes a serious disturbance to neighbours, or breaches its shareholders' agreement, the company may use its powers to evict the shareholder and remedy such breaches.

The shareholder is responsible for the upkeep of the dwelling, with the housing company taking responsibility for common parts, structure, common services and other common repairs.

While the tenure system is quite different to Ireland's, there are clear protections and supports for property purchasers. These include a duty to disclose on owners selling property, and a robust defects liability process for the sale of new apartments, including a one-year defects inspection.

A duty of disclosure on the part of owners when selling a second-hand apartment may result in the vendor being pursued for costs following the sale of their unit.

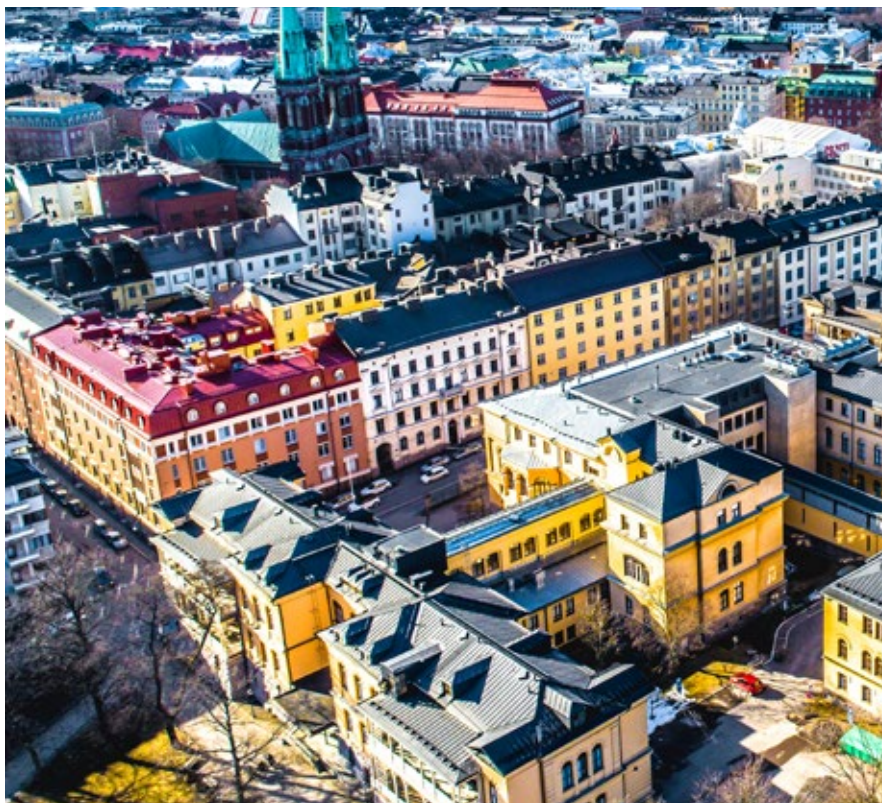
Defects in apartments

Finland has wide-ranging consumer protection in relation to defects in both new and used apartments when offered for sale, and its system is far removed from Ireland's "caveat emptor", or "buyer beware" culture.

Summary

Finland is a progressive society and has enjoyed two decades of property price increases, but more recently has encountered supply shortages in housing and a lack of affordable housing. Finland has been applauded for its Housing First model of tackling homelessness. In contrast to European trends, Finland has managed to reduce homelessness.

As a model for Irish MUDs and OMCs, the only take from Finland is that it has a model that works. Compliance and satisfaction with MUDs are high, however they have had their system in place for nearly 100 years.





In contrast to European trends, Finland has managed to **reduce homelessness**

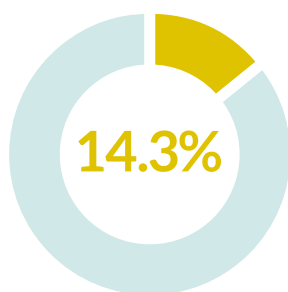
United Kingdom



Our closest neighbour



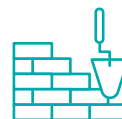
Yearly growth in population of 500,000 people



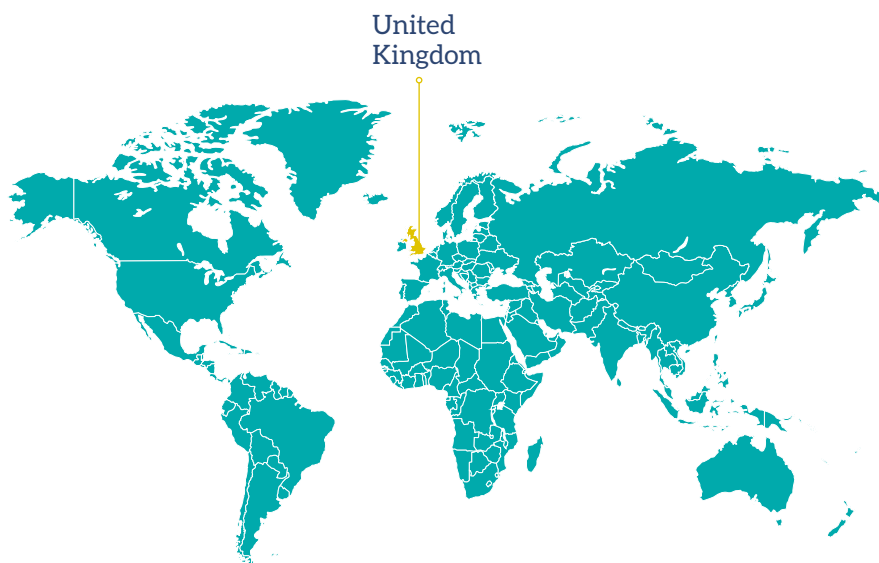
14.3% of the population lives in apartments



Third lowest rate of apartment living in Europe



Housing delivery is half the yearly population growth



Introduction

The United Kingdom is our closest neighbour, and the country from which our tenure system is derived. The system of leasehold/freehold is one that we inherited from our time as a British colony, and the countries' tenure systems remained largely aligned until Irish independence.

Over the years, we have introduced legislation to move away from the British perpetual valuations of freehold and reversionary interests, opting for a system where beneficial owners are entitled to perpetual and unencumbered ownership.

Size of sector

14.3% of the population of the UK lives in apartments; the third lowest

rate in Europe (Eurostat 2018). The UK population is growing by approximately 500,000 persons per annum, with housing delivery at about half of that figure (Tziamalis 2018).

Tenure

The British tenure system delivers power to ground and freehold landowners that is absolute. Its system means that large landowners may enforce covenants over property of which they have little immediate beneficial ownership by way of capital value or rental income. This position would be difficult for Irish people to understand, as it is almost 40 years since Ireland prohibited the creation of ground rents. However, in the UK, ground rents and long leaseholds still exist for new houses as a means of

long-term investment and management control.

In the cases of new apartment developments or management environments in the UK, there appears to be no requirement for management to be controlled by the unit owners. Where control is to fall to unit owners, the UK uses similar methods to Ireland, with *"company law and contract law used in addition to property law to achieve the best solution"* (Dupuis 2010).

In Ireland, we have an absolute right for the reversionary interest in the lease for each unit to be held by the OMC which, in turn, owned by the unit owners; this does not exist in the UK. In the UK, leaseholds are shorter. LEASE; the Leasehold Advisory Service set up by the Ministry of Housing, Communities and Local Government, *"provides free initial advice to members of the public on residential long leasehold.... with a lease longer than 21 years"* (LEASE 2013). The areas of leasehold, reversion and rights to renew are complex, and while they have a strong influence on multi-owned housing in the UK, they are not an issue for analysis in this paper.

One advantage of the developer retaining a beneficial interest in an apartment building is that there is greater interest in its long-term value and maintenance, which should mean a greater focus on initial quality of construction and design. The case for a change to freehold ownership, i.e. to an OMC, would mean that the developer would soon be out of the picture, suggesting a risk for the new freehold owners.

Because of the legal framework, there are many hybrids in the UK. Ultimately, because the ownership of the freehold or reversionary interest is not tied to the unit owners and a management company that they control, it is possible for the freehold interest to be sold to other parties who can decide on the management of the MUD.

It could be argued that an interested freeholder, controlling the service charge and maintenance regime of a multi-occupied building, is not a negative arrangement. The freeholder can exercise its rights in a more robust manner as a lessor, as opposed to as an OMC. The freeholder still retains the right of forfeiture, which encourages leaseholders to comply with the terms of their lease.

Rights and obligations of unit owners/shareholders

The Commonhold and Leasehold Reform Act 2002 provides a right for leaseholders to force the transfer of the landlord's management functions to a special company set up by the leaseholders (HMSO 2002). The right was introduced, not just as a means of wresting control from bad landlords, but also to empower leaseholders, who generally hold the majority of the value in the property, to take responsibility for the management of their block (LEASE 2002). The process involves the leaseholders forming

/ One advantage of the developer retaining a beneficial interest in an apartment building is that there is greater interest in its long-term value and maintenance, which should mean a greater focus on initial quality of construction and design /



a Right to Manage company (RTM company) and serving a formal notice on the landlord. It is important to note that the RTM company must comply with any government-approved code of management practice. The RTM company must also manage the building with the landlord's rights in mind, and the landlord becomes a member of the RTM company.

While it appears that more developers of apartments are providing title on the basis of OMC-owned freehold, and with the ability of leaseholders to create

RTM companies, it remains that in “any multi-owned residential development run by leaseholders, there is potential for a clash between individual and collective interests, because once the residents' management company has acquired the freehold, the covenants must be enforced by neighbouring owners” (Dupuis 2010).

It is clear that similar circumstances arise in the UK as in Ireland, i.e. in relation to control of management companies, and abuse by developers and ground landlords. However, it remains that, where control is passed to the unit owners, there is no solution to the abuse of power by members, or the dereliction of duties by the controlling board.

In the author's discussion with a property management software provider in both UK and Ireland and a former property management agent in Ireland, it was

/ The UK has a complex tenure system. It continues to protect the rights of long-term reversionary landlords, and their right to receive ground rents. This influences the multi-owned housing sector or long leaseholder sector /



suggested that there were many things in the UK that were a mess; typically around the ownership of the freehold and control of the management structure, but that certain things were positive. When the software provider had first entered the UK market, his sales pitches focussed on the user-friendly manner in which the software could issue demands, reminders, charge interest, and provide other tools for the convenient collection of service charges. His focus quickly changed, because he realised that most leaseholders and unit owners in the UK paid their service charges quickly with no fuss, and were generally compliant in all lease obligations. He attributed this compliance to a number of reasons, including a cultural tendency to pay bills, but also the large stick that landlords in the UK traditionally hold, i.e. their right to forfeit (which, while draconian, is still a recognised right), as well as the confidence that the courts will provide support.

The UK has a complex tenure system. It continues to protect the rights of long-term reversionary landlords, and their right to receive ground rents. This influences the multi-owned housing sector or long leaseholder sector. However, despite the traditional legal position, the UK Government has provided legislation to assist in the creation of LEASE; the Leasehold Advisory Service, and the facility for disputes to be adjudicated by the First-Tier Tribunal Property Chamber (Residential Property). The Tribunal has jurisdiction over service charges, administration charges and other matters relating to leasehold management. It may hear cases over breaches of lease, Right to Manage, service charges, and other matters of leasehold management. Many of the cases may be submitted by way of written evidence.

From a cursory review of published Tribunal cases, the matters adjudicated upon relate to disputes between

landlords, OMCs, and leaseholders. The Tribunal reports are clear and comprehensive in their determinations. Applications to the Tribunal are by way of written forms, of which there is a wide range available, with related guidance. A fee of GBP£200 is payable on processing the application; the fee appears reasonable and affordable.

Defects in apartments

Following the tragedy in Grenfell, there has been an increasing focus on defects in multi-unit buildings; a House of Commons Briefing Paper was issued in late 2018. All new homes in the UK must comply with Building Regulations. Building control inspectors are employed by local authorities to ensure that technical standards are met, however inspectors do not monitor build quality (House of Commons Library 2018).

Like Ireland, the UK's building defects warranties are associated with the procurement of home loans. The National House Building Council Buildmark, Premier Guarantee, and Local Authority Building Control Warranty schemes operate within the Consumer Code for Home Builders, which provides a structural warranty for 10 years, and a two-year fixtures and fittings warranty (Consumer Code for Home Builders Limited 2010).

/ All new homes in the UK must comply with Building Regulations. Building control inspectors are employed by local authorities to ensure that technical standards are met, however inspectors do not monitor build quality /

Summary

The UK market is made up of a mixture of tenures, with varying degrees of ownership and equity for long leaseholders. The continued creation of ground rents, and the exercising of rights by ground landlords and freeholders continue to be debated. Many new apartment developments have adopted the OMC model, but it is not a requirement under law.

Legislation has been introduced to deliver some protection to apartment owners or long leaseholders, and to ensure some transparency in service charges.

Australia, New South Wales



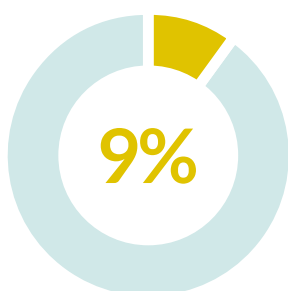
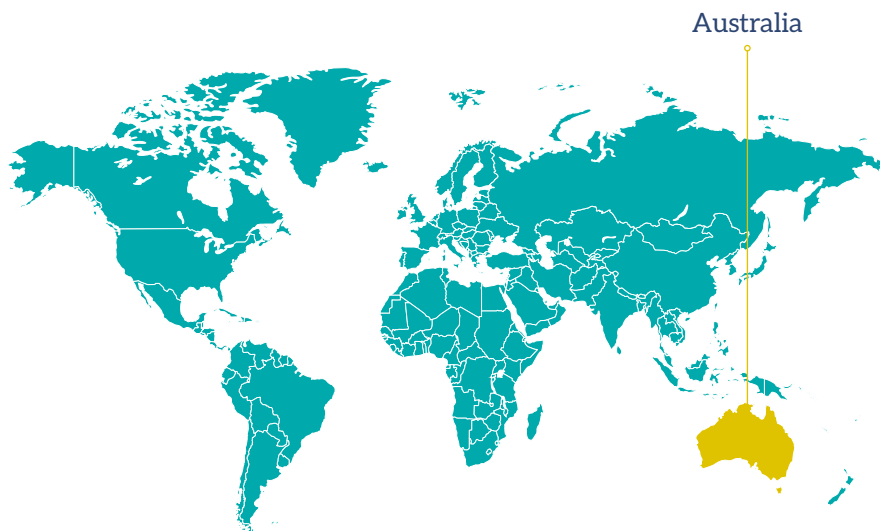
23.7 million
population



316,227
strata schemes



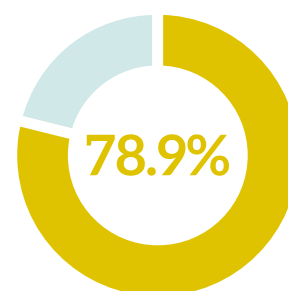
The “Better
Cities Program”,
was introduced
in the **1990s**



9% (2.2m) of the
population lives
in apartments



26% of apartment
residents are owner
occupiers



78.9% of private dwellings
in the City of Sydney are
multi-storey apartments

Introduction

Australia has a history of providing healthy residential environments associated with home ownership, with an emphasis on open space and the “garden” city. Low-density development underpinned by an abundance of land, high incomes, and state provision of transport and other infrastructure became associated with social progress (Dupuis 2010). Moving away from low-density sprawl sparked the debate between urban and suburban living and residential satisfaction.

Residential satisfaction is characterised by two opposing positions; those who

associate it with strong community and social networks, and others who are more concerned with ownership and quality of housing (Dupuis 2010).

The “Better Cities Program”, introduced in the 1990s, encouraged more just and economically efficient cities. This policy, combined with economic growth and migration pressures, has led cities to turn to higher density housing.

Size of sector

Over the past 25 years, the number of occupied apartments in Australia

has increased by 78% to over 1.2m dwellings (Australian Bureau of Statistics 2016). Australia published its first Australian National Strata Data in 2018. While, as expected, the Australian apartment sector is much larger than that of Ireland when measured by population size and building numbers, it is quite similar to Ireland by reference to relative proportions. Of the 23.7m Australian residents, some 2.2m (or 9%) live in apartments, and 26% of these occupants are owner-occupiers. There are over 2.5m apartments across 316,227 strata schemes.

A strata scheme is owned by an owners corporation, which is the equivalent of an OMC. The combined property value is some \$995bn for insurance purposes, and over 9,000 people are employed full-time, with over \$5bn spent on call-out jobs in 2017. Of the 107,680 private dwellings in the City of Sydney, 78.9% are multi-storey apartments (City of Sydney 2017).



Rights and obligations of unit owners/shareholders

Strata title in Australia evolved from the post-Second World War development of flats in response to housing shortages. Company and leasehold titles or tenancy, were common methods used to divide ownership. In order to create individual beneficial ownership of units within a larger building or environment where services or land were shared, the Conveyancing (Strata Titles) Act was passed in New South Wales in 1961. This legislation has been followed by a series of further acts across Australia and New South Wales, with the most recent being the Strata Schemes Management Act 2015.

Australian legislation reflects the importance of control and regulation in a fractional ownership and co-operative living environment. *"Recognising Baldassare's view that the principal*

area of concern in relation to residential satisfaction in Multi-Owned Developments relates to the residents' sense of control over the management of their dwellings, legislation is prescriptive and very detailed" (Dupuis 2010). The body of legislation, developed over a period of 50 years, has resulted in a highly directed legal and regulatory environment. This regime deals with everything from definitions of what each unit owns and does not own, to fire safety inspections. It addresses the development of sinking funds and their adequacy, tenant representation on boards (including limitations), and the collection of service charge levies.

The prescriptive nature of the legislation removes ambiguity and discretion from the strata company. The absence in Ireland of equivalent prescription in the context of MUDs opens the Irish sector to the application and interpretation of wider precedents set in landlord and tenant common law. These precedents are not necessarily suitable to MUDs.

/ Strata title in Australia evolved from the post-Second World War development of flats in response to housing shortages /



/ Australia and its territories have acknowledged the need for robust legislation and consumer protection in this important and growing housing sector. There is government acknowledgement of the abuses in the sector over the years. This recognition has led to a continuous review and improvement of legislation /

Considerable investment has been made in well-thought-out legislation and guidance that educates and regulates strata companies, their agents, and building managers. The legislation also provides structure to the transition between developer and strata company, and obliges the strata committee to explore the possibility of building defects during a bond or guarantee period. The legislation also restricts the strata company from certain decisions during the "initial period"; the period where the "original owner" or developer is still selling units.

The legislation recognises the differences between smaller and larger schemes, and places greater responsibility on schemes that have over 100 units.

As New South Wales was the first state to introduce legislation for strata

schemes, this report focuses on its processes and structures.

Australian law provides for a process of penalties for breaches specified in legislation. Legislation will specify a Maximum Penalty detailed as penalty units, which, under the Crimes Act 1914, attract a monetary value, currently AUS\$210 per unit (about €130 at the time of writing). Penalties are subject to indexation from 1 July 2020. For example, the failure of the developer to produce documents and records can result in an AUS\$21,000 penalty; there is a maximum penalty of 100 units.

Penalties for breaches of provisions of the Strata Schemes Management Act 2015 apply to many of the stakeholders, including the owners corporation, management agent, owners, tenants and developers.

In addition to legislation, there are a number of other state bodies that can assist with owners corporations, agents and residents. The New South Wales Civil and Administrative Tribunal (NCAT) will issue orders under the Strata Schemes Management Act 2015, and NSW Fair Trading will assist and advise on applications to the NCAT. NSW Fair Trading has produced a full suite of factsheets for strata schemes, dealing with matters including building bonds, meetings, levies and capital works, parking, mediation, renovations.

Australia and its territories have acknowledged the need for robust legislation and consumer protection in this important and growing housing sector. There is government acknowledgement of the abuses in the sector over the years. This recognition has led to a continuous review and improvement of legislation, to empower owners corporations, and to protect the collective ownership in strata schemes.

Owners corporations are empowered to pursue building defects, implement

house rules, and avail of a tribunal process that is cheaper and less onerous than the courts system. This system is in place without prejudicing unit owners' rights.

The prescriptive nature of Australian legislation enables the imposition of fines by owners corporations for breaches of legislation, and places in statute many obligations of owners to protect the enjoyment of property by all.

on site and is contractually liable. Access to the NCAT makes the process far more procedural and less expensive than pursuing matters through the courts.

This regime does not mean that Australia is without problems in the sector; it simply means that the country recognises the issues as they arise. It seeks corrections in a robust legislative environment, offering protection to the owners corporation and its committee.

Defects in apartments

The introduction of a developer's bond and an independent building inspection regime places an obligation on the owners corporation to seek out defects in the building. The owners corporation is obliged to take action while the bond is in place, and while the developer remains

Summary

The acknowledgement and understanding of the sector by government, the prescriptive nature of legislation, and access to a tribunal all assist in the management of owners corporations, the collective rights of owners, and the performance of management agents. In the author's opinion, this has also encouraged banks and boutique lenders to lend to owners corporations, providing finance for building works when the owners corporation has not built up an adequate sinking fund.

The ability to borrow is recognised in legislation. Loans are not secured against property and there are no guarantees from owners. Loans are a liability of the owners corporation and repayments must be incorporated into the annual maintenance levy.



Table 4: Summary of sections to Strata Schemes Management Act 2015

Strata Schemes Management Act 2015 – New South Wales – summary of sections

Part	Provision
Part 1	States the objectives of the Act as providing for the: <ul style="list-style-type: none"> management of strata schemes resolution of disputes arising from strata schemes
Part 2	Management of strata schemes: Capturing the constitution of the owners corporation, its functions, the initial period, first AGM and terminations
Part 3	Strata committee of owners corporation: The election, functions and authority of the committee
Part 4	Management agents and building managers: Appointment of agents, transfer and delegation of functions and their accountability
Part 5	Financial management: Detailing the need for administrative and capital works funds, contributions by owners, statements, records and general financial functions
Part 6	Property management: Duties of the owners corporation to maintain and repair, works by owners, powers of entry into owners' lots, orders on alterations and safety
Part 7	By-laws for strata schemes: Rules to bind owners and each tenant and occupier, dealing with levels of occupancy, restrictions on certain rules and the procedure to change rules and their enforcement – including fines and reference to Tribunal
Part 8	Obligations of owners, occupiers and others in relation to lots: Obligations regarding alterations, nuisance, agents, animals, etc.
Part 9	Insurance obligations: Obligation to insure the scheme against certain risks, insurance claims and other items
Part 10	Records and information: Prescription of records to be kept, who can inspect
Part 11 (Division 1 and 2)	Building defects: Details of obligations of developer, building inspectors and reporting requirements
Part 11 (Division 3)	Building bonds: Requirements of developer to submit a bond of 2% of contract price for building work, stating when its payable, released and the authority of Tribunal
Part 12	Disputes and tribunal powers: Details regarding mediation and Tribunal processes and orders
Part 13	Offences and enforcement: Investigations by Secretary and issue of penalty notices
Part 14	Miscellaneous: Functions of Secretary, delegation, service of documents and other items

Source: Paul Mooney



In addition to
legislation, there
are a number
of other state
bodies that can
**assist with owners
corporations, agents
and residents**

Canada, Ontario



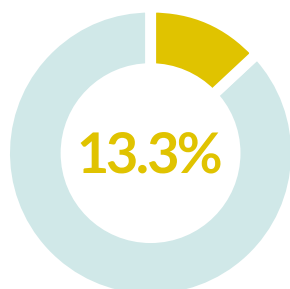
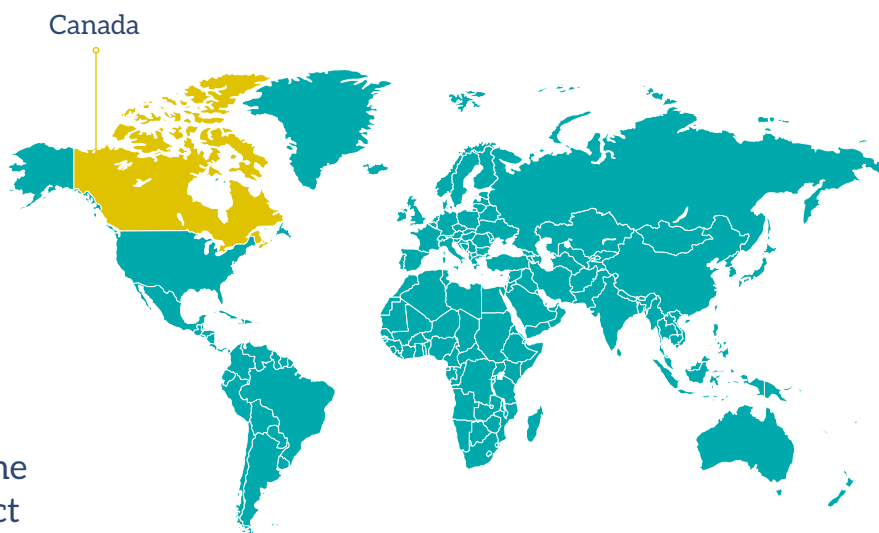
1.9 million
people live in
condominiums



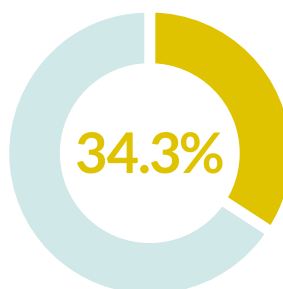
700,000
condominium
units in Ontario



1998 saw the
introduction of the
Condominium Act



13.3% of
households live
in condominiums



34.3% of residential
properties constructed
from 2001 to 2011
were condominiums

Size of sector

Over 1.9m Canadians (or 13.3% of households) live in condominiums (or “condos”). Between 2001 and 2011, 34.3% of residential properties constructed were condominiums (Statistics Canada 2018). In December 2015, Ontario had approximately 700,000 condominium units, being managed by 10,000 condo corporations or management companies, and housing 1.3m people.

Rights and obligations of unit owners/shareholders

In general terms, the tenure nature of condominiums in Canada and Ontario is similar to that in Ireland; a condominium corporation (equivalent

to an OMC) holds the ownership of the common parts. When a condominium is purchased the buyer takes ownership of the unit, together with an interest in the common parts. The interest in the common parts may not be separated from the unit ownership.

The Condominium Act was passed in 1998 and, following a review commenced in 2012, was amended by the Protecting Condominium Owners Act 2015. This new legislation followed a consultation process over a period of 18 months, which gave rise to 200 recommendations.

The review of the Act by Canada's Public Policy Forum also resulted in government taking a collaborative approach to policy making. Condo legislation “...not only raises many complex

regulatory issues but, as self-governing communities, condos also raise important questions around governance and community building” (Public Policy Forum 2013).

The review group focused on five areas:

- Consumer Protection
- Financial Management
- Dispute Resolution
- Governance
- Condominium Management

Common themes that arose during the review process were:

- Education
- Information
- Condo board transparency and accountability
- The power imbalance between boards and owners
- The role of condo bye-laws
- Engagement

The commonality of the findings of the review group in Ontario, from literature reviews based on other jurisdictions and from the qualitative research, indicates that Ireland is not experiencing anything that other countries and apartment owners have not encountered.

The key recommendations of the review group focused on the establishment of a “Condo Office” which became the Condominium Authority of Ontario (CAO). The CAO was established to improve condominium living by providing services and resources for owners, residents and directors, including:

- Information to help owners and residents understand their rights and responsibilities
- Mandatory training for condo directors
- Resources to help condo owners and residents resolve common issues
- A publicly available, searchable, online registration of all condominium operations in Ontario as required by regulation
- An online dispute resolution service

through the Condominium Authority Tribunal (CAT)

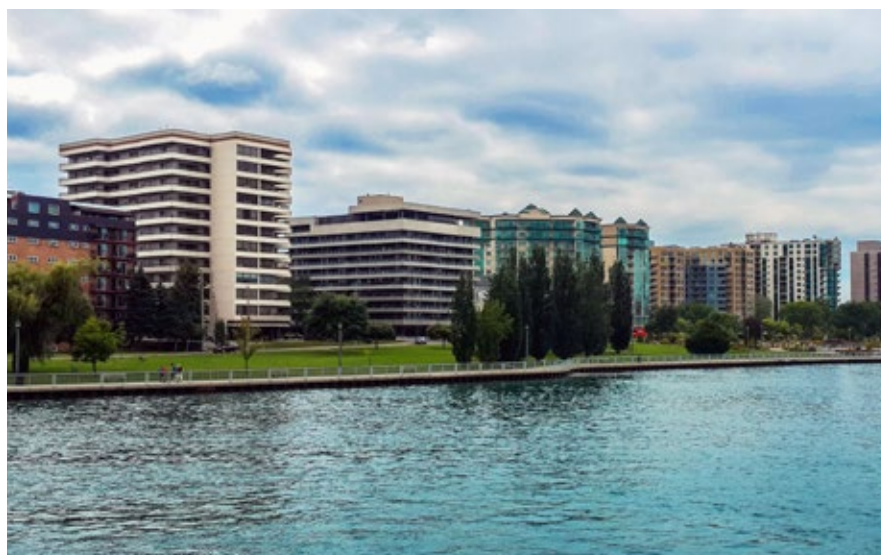
The CAO charges each condo corporation a fee of CAN\$1 (about €0.66 at the time of writing) per unit per annum, and legislation allowed for this charge to be incorporated into the annual assessment fee.

The Condominium Authority Tribunal

The CAT is Canada's first fully online tribunal, and the entire dispute resolution process is managed online.

Tribunal fees vary from the involvement of the Tribunal but are CAN\$25 for a Guided Negotiation Fee which is Stage 1 of any dispute, CAN\$50 for an Assisted Resolution phase, which is Stage 2, and CAN\$125 for a formal adjudication process with a binding

/ The commonality of the findings of the review group in Ontario, from literature reviews based on other jurisdictions and from the qualitative research, indicates that Ireland is not experiencing anything that other countries and apartment owners have not encountered /



/ The review group recognised that directors play a critical role in the success of condo corporations. This led to the introduction of mandatory training for directors /

order issued. Adjudicators, where necessary, are charged at a rate of CAN\$200. Fees are payable by the complainant and are not refundable, but the CAT may award costs and order a penalty payment.

CAT decisions are available online. Since the system's inception in 2018, there have been 20 decisions, or approximately two per month, most of which relate to disputes over availability of records for members of the condominium community.

On review of the cases, the tribunal appears to operate efficiently and in a transparent manner, which is likely to assist in future cases taken by owners and condo corporations.

Director training

The review group recognised that directors play a critical role in the success of condo corporations. This led to the introduction of mandatory training for directors. From 1 November 2017, all directors elected or re-elected are required to complete a training programme within six months.

The CAO provides training free of charge to all directors, and it is open to all members of the condo community and the public. Training is delivered online and the modules are 10-20 minutes long. The entire training course takes between three and six hours to complete, depending on whether directors listen to or read the transcript. Modules cover:

- The fundamentals of condominium corporations
- The legal framework governing condominiums
- The role of directors and their responsibilities
- Effective leadership: creating strong condominium communities
- Board meetings and owners meetings

- Requisitioned meetings
- Best practice for conducting owners meetings
- Obligations regarding corporate records
- Financial fundamentals
- Reserve funds and reserve fund studies
- Auditors and annual statements
- Collections and liens
- Insurance
- Modifications to the common elements
- Repair and maintenance
- Procurement processes and best practices
- Information certificates
- Status certificates
- The Condominium Authority of Ontario
- The Condo Authority Tribunal
- Understanding condominium management

Once a director has completed training, they do not have to re-take the training for seven years. After completion directors are awarded a certificate evidencing the training; this is available to download or online.

If a director misses their deadline for training, i.e. six months from election, they immediately and automatically cease to be a director and no longer count as a quorum of the board, may not vote at the board, and may not be indemnified against liability and costs as detailed in law.

Information

The CAO offers a large amount of information online for condo buyers, owners, residents and directors. It details the main attributes of condominium living, ownership and responsibilities, together with a large suite of "How-to" guides, draft letters, and general guidance.

Each condo corporation is also required to issue Periodic Information

Certificates twice per fiscal year to all owners, within 60 days of the end of the first quarter, and 60 days of the end of the third quarter. This includes key information about the corporation's board, finances, insurance, reserve fund, legal proceedings, and other matters. An example of a Periodic Information Certificate is in Appendix I.

In addition, any key changes should be distributed by way of an Information Certificate Update (ICU) within 30 days of the change.

New Owner Information Certificates are issued to new owners within 30 days of the new owner providing written notice that they have purchased. The certificate contains the most recent Periodic Information Certificate and subsequent ICUs.

The condo corporation must also produce a Status Certificate which contains important information about the corporation and any specific unit.

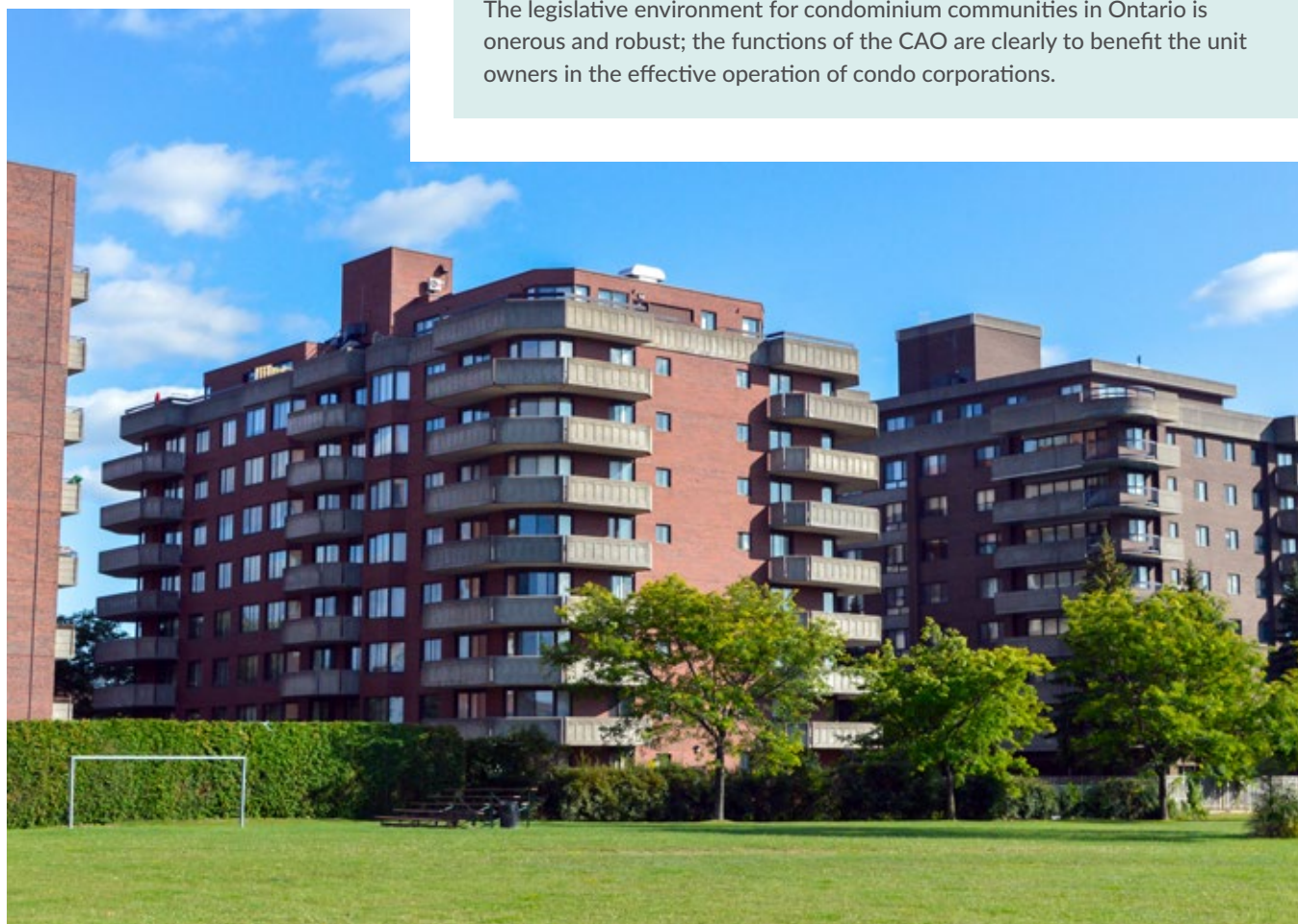
The CAO offers guidance to purchasers of condominiums and encourages transparency in the purchase process.

Public database

The returns made to the CAO provide information on the condo corporation, including the condo details, directors' details, insurance details, financial information, legal actions, outstanding judgements, and compliance with the Condominium Act.

Summary

The legislative environment for condominium communities in Ontario is onerous and robust; the functions of the CAO are clearly to benefit the unit owners in the effective operation of condo corporations.



A photograph of two women sitting on a couch in a bright, indoor setting. The woman in the foreground is wearing glasses and a light blue sweater, smiling warmly at the camera while holding a blue cup. The woman in the background is older, with short grey hair, wearing a beige sweater and also holding a blue cup. The background is softly blurred, showing hints of a home interior.

30%

of attendees at the AON focus
group would not become a
director of an OMC

5 /

Research Findings

Research Findings

At the outset of this project it was decided that the research would take a significantly qualitative approach and that the research findings would be based on interaction with specific stakeholders. Research was undertaken by way of interview with specific stakeholder categories. Interviews were carried out with the use of a questionnaire but were not constrained by the specific questions.

3 stakeholder categories identified



Policy & Law Makers

Three broad stakeholder categories were identified; Policy and Law Makers (Government), Designers and Providers (Industry), and Users, Managers and Advisors (Civil Society). These three categories capture each of the stakeholders at their position in the life cycle of MUDs.



Designers & Providers

Policy and Law Makers include the Government and local authority offices responsible for detailing policy that results in the development of high-density housing through national framework plans, development plans, design guidance and planning regulations.

Designers and Providers take the framework set out by policymakers, and deliver housing schemes. **Users, Managers and Advisors** are those who are left with the final development to live in, maintain, repair and fund.



Users, Managers & Advisors

In addition to the in-depth interviews there was a focus group with the Apartment Owners' Network (AON), and door to door surveys of three apartment developments in Dublin. On completion of the draft report, a stakeholders' seminar was held to present the draft recommendations to delegates. The seminar was well

attended, and many of the draft recommendations were well received.

Interviews with stakeholders

The research questionnaires contained broad topics within the OMC sector, and these are reported under the following headings:

Should we be building more apartments?

There was unanimous consensus that Ireland needs to develop more apartments for its cities because apartments are considered a better use of land, more sustainable, and more suitable to our changing demographic. *"With our household sizes changing, our expectations or attitudes towards housing should change with it, Ireland has not consciously or subconsciously adjusted to that change"* (Government Interviewee).

"Over 60% of dwellings in Dublin are houses but only 33% of households are families, there is considerable underutilisation of our housing stock...design is very important, getting the right atmosphere into the place, getting more of the right examples and getting them built..." (Industry Interviewee).

Interviewees across the categories were supportive of the development of apartments, however there was concern expressed regarding the attitude towards apartments as a

/ On completion of the draft report, a stakeholders' seminar was held to present the draft recommendations to delegates. The seminar was well attended, and many of the draft recommendations were well received /

housing type. The view was taken that it is *"imperative that more apartments are built to curb urban sprawl and maximise the use of facilities and amenities....the psyche of the Irish is contrary to apartment living..."* (User Interviewee).

The benefits of apartment living for some owners, revolved around quality of life aspects, where *"delivering out apartments more than an hour's commute from the city centre"* (User Interviewee) is not the ideal. In addition, the perception that apartment living and developments have their own suite of problems is perhaps overstated: *"you feel like parking is a friction point, in a traditional housing estate there is friction over parking so it's the same issues"* (User Interviewee). This view can be carried through to a number of issues, ranging from anti-social behaviour, to the external upkeep of a property. In traditional housing estates, residents rely on the common decency and community spirit of neighbours to maintain their

property and behave in an acceptable manner; in OMC environments there is a mechanism to complain and enforce in a more robust manner.

Over 30% of attendees at the AON focus group did not believe that apartment living/ownership is a good housing model. Looking at modern density levels for new housing estates, there is a move away from large gardens and driveways, for multiple cars, to *"modern dense housing schemes, where we are stacked as dominos, with all houses looking onto each other, where good apartment design can co-ordinate aspects better to avoid overlooking"* (User Interviewee).

It is also clear that the consensus view of all interviewees referred to good design and quality construction. *"Building defects is a huge issue"* (Industry Interviewee) for OMCs and apartment owners, with little recourse to developers, builders and professional design teams.



Over 30% of attendees at the AON focus group did not believe that apartment living/ownership is a good housing model



Many of the interviews with the Government category focused on delivery of new homes in the context of the current housing crisis, and the objective of the National Planning Framework of increasing density in our cities. These interviews acknowledged that this would involve the successful development of high-density housing, typically associated with shared services and areas, and the use of an OMC structure.

The overriding consensus from those interviewed was that new apartments must deliver from a quality-of-life perspective; they need to be designed well, reduce commuting times, improve community facilities, and embrace communal living. There is an opportunity now to learn from the past and get this critical component of our national housing strategy right: *"any problems that are systemic in that area, we should iron out as part of the process of moving more people into apartments, focus more on the lived experience, shared areas, community focused....the first basic question is what is the national rational policy around the management of these estates, which parts are devolved to local authorities and what is the guidance around it"* (Government Interviewee).

The perception that apartments are not for family living remains, but it is difficult to ascertain whether this is a cultural hurdle and perception, or a reality. The offering must be improved; not only in the design of individual apartments but of common parts, outdoor spaces, and in the surrounding civic spaces. Focus needs to be on delivering an urban offering that is attractive to all in our evolving society.

"The need for storage and back garden moves people towards houses when they start having children, but this is something that could be overcome by pocket parks for young children, green spaces...moving to a house from a well-designed second floor apartment with great sky component, we miss it, neighbours are more proximate now in a new housing estate" (Industry and User Interviewee).



Researcher viewpoint



It is clear that Ireland needs to embrace apartment living in order to provide sustainable accommodation for its increasingly urban and growing population. The perception of apartment living is poor because it is not viewed as an enviable living experience, there are fears of not being in control of costs, and there are questions over construction quality. To bring about this cultural shift, we need to explore how to improve the living experience. This may be achieved through better design, increasing confidence in apartment living/ownership, and provision of a transparent and industry-wide way to assure purchasers over construction defects.

In London, densities have been removed from planning and focus is purely on good design and its context. Perhaps we should focus more on design in our built environment, considering the lived experience and looking to embrace an urban, collective and inclusive environment, instead of seeing it as personal property for personal exclusive enjoyment.

Apartment design and construction

There is a sense that apartment owners have been burnt, and apartment ownership has a bad reputation. Regulations need to be strengthened and supports are required for OMCs.

"Building defects is a huge issue.... creating financial problems for OMCs" (Industry Interviewee) and inflicting significant reputational damage on apartments as a housing solution. The failings of self-certification in Ireland's longest period of apartment construction have resulted in a large number of apartment buildings and owners having to fund defects, *"living with leaks, damp, structural and fire safety defects without any means of remedying problems"* according to Orla Hegarty (Horgan Jones 2019). The cost of remedial works across apartment buildings and estates controlled by NAMA alone has already exceeded €140m, and will continue to grow until all defects are identified and remedied (NAMA 2018).

The question arising, of whether new building regulation reforms introduced in 2014 are enough to deliver confidence to purchasers of apartments and eliminate building defects from our new developments, remains.

As detailed previously, of all EU countries Ireland has the smallest proportion of population living in apartments. It follows that there are successful design examples overseas.

"We need to build more apartments, the new standards for apartment design are good enough". One Industry Interviewee echoes many industry commentators when suggesting that we need more one and two-bedroom units and fewer larger apartments, but that apartment buildings should be better built, and higher-rise apartments are appropriate for specific locations.

It is clear that the introduction of BCAR is considered a positive move in

/ There is a sense that apartment owners have been burnt, and apartment ownership has a bad reputation. Regulations need to be strengthened and supports are required for OMCs /

strengthening our building control and practices, but there is a question as to whether it is enough: *"Is BCAR enough, some inspectorate is probably required..."* (Government Interviewee).

When we examine the frequency of building control and latent defect issues in apartment developments, as compared to commercial developments, there is one significant difference in how the buildings are delivered to, and accepted by the end users.

In a large commercial development of offices, the builder will work with a developer and, usually, a funder to a specification agreed. Both developer and funder may put in place a system of supervision that will be tied to a robust building contract that is transferable, and warrants both the developer and funder. When the building is delivered, it will likely be handed to a tenant to fit out. The tenant will then introduce their own professional team to design and supervise the fit-out and, as part of this, will identify any issues with the building fabric and construction. Should the developer sell the building as an investment, prior to purchase the prospective purchaser will carry out a rigorous examination of the structure, warranties and certification.

All stakeholders in this process are aware of the arduous inspections, and understand that failure in any section will have serious cost repercussions. Post-completion, should construction issues arise, there are commercial decisions made regarding their remedy. The relevant stakeholders agree a process of remedy, or seek recourse through a dispute resolution



Over €140m has already been spent on remedial works across apartment buildings and estates controlled by NAMA

mechanism, or through the courts. The process is simplified by the existence of a single owner and a funder who have both invested heavily in the transaction and can make commercial decisions. At every point, the building contractor and professional team are aware of the requirements placed on them and perform appropriately in the majority of cases.

In apartment buildings, where units are disposed of individually, the process is fragmented. Each purchaser has a survey carried out (or not); the surveyor focusses on snags within the apartment, rather than conducting an overall survey of the building. There remains no requirement for an OMC to survey an entire building post-completion. There is no regulation of developers or requirement for collateral warranties for any specified period. The financial robustness of development companies is rarely raised as an issue for purchasers, and the use of special purpose vehicles of limited liability companies for each specific

development can restrict recourse under contract.

"A small team inspecting buildings from local authorities as they are being built would make a huge difference" (Government Interviewee) and would provide some comfort to purchasers of apartments that standards are being met. At the stakeholders' seminar, the point was made that there is "no enforcement of building regulation in Ireland, the private sector has a key role but it cannot be left alone and one cannot underestimate the shift that is needed in our construction industry and building regulatory environment" (User Interviewee).

As detailed by one Government Interviewee: *"there are three things that an inspection does, firstly it creates an expectation of an inspection and oversight on the builder/developer which correlates to a cost if anything is required to be re-done, secondly the inspection offers comfort that someone has turned up and looked around and highlighted issues for addressing, thirdly it provides for some degree of enforcement – if the first and second work, the third becomes less frequent".*

Policymakers' focus on apartment design, and construction appears to be concerned with the planning process, rather than the lived experience and costs associated with maintenance, repair and upkeep. Building regulations do not focus on hard-wearing materials, longevity and lower maintenance costs. There is little by way of collateral warranties or latent defect insurances for apartment buildings. Instead, in the past, they were sold with inadequate structural guarantees. These guarantees required damage to occur before any remedial works would be available. In the case of fire-stopping, it simply meant that there was no cover available to remediate, because the absence of fire-stopping did not cause damage to the building.

/ Policymakers' focus on apartment design, and construction appears to be concerned with the planning process, rather than the lived experience and costs associated with maintenance, repair and upkeep. Building regulations do not focus on hard-wearing materials, longevity and lower maintenance costs /

Researcher viewpoint



We must look at the societal positives of apartment living and the vibrancy it delivers to our cities and towns. State support, by way of specific building regulations, controls and guidance, needs to be delivered for apartment dwellings, to secure the safety of occupiers, and copper-fasten their security as a viable option for home buyers. Robust apartment building regulations that restrict certain materials, and focus on low maintenance and longevity, need to be introduced. These regulations would protect OMCs and unit owners from costs associated with short life-cycles arising from poor or inappropriate materials.

Management agents

"A good or average management agent adds value, a very good to excellent management agent does more than that...I can see the value of a good management agent...it's important to have trust and confidence – there is only so much time you can commit to running what is essentially a significant enough business" (Industry and User interviewee).

The responses in relation to management agents were quite personalised, based on specific experiences of particular individuals. Management agents work in a professional capacity within a highly personal and emotive environment. The management agency is often the branded layer that unit owners and residents associate with the management of the complex. Often, directors do not understand who decision-making lies with; conversely, there are many circumstances where the agent carries out the instructions of the board of directors without consideration of the validity of the instruction.

"Management agents should advise, but don't visit enough, it takes a long time to bed them in when you change agent...to find out where everything is, they are often overworked, and the service is less than satisfactory" (User interviewee).

One User Interviewee offered some measured insight, suggesting that their long standing firm of agents *"knows the history of the development and has experience with the structural issues but spends a lot of money outsourcing, they are not proactive and do not come up with new ideas, there is a high turnover of personnel in the agency – we have a new manager every two years – the agent is just an implementer rather than instigator"*.

One Government Interviewee offered that *"management agents performed well and were performing well in general. There will always be complaints for a variety of reasons, but their contribution is positive"*. The introduction of licencing was a

positive move for the sector and for management agents. The educational requirements, compensation fund and professional indemnity requirements all deliver some comfort to OMCs.

The Property Services (Regulation) Act 2011 is almost the same age as the MUD Act. In another booming economy, where the property sector is thriving, residential management agency is not the most attractive of career choices for a young property professional. The OMC sector has typically been a training ground for young property professionals, which means that there is a high personnel turnover and a lack of consistency. Management agents of MUDs have a wide level of exposure to owners, tenants, contractors, etc. which is not experienced in other property sectors. Commercial managers deal in a professional environment, whilst letting and sale agents operate on a transactional basis in a short-term relationship with a client. Management agents operate in an emotive environment, dealing with people's homes, in a long-term relationship that is demanding, and revolves greatly around people's problems with their living environment.

The position does become easier as an agent becomes more experienced, but it also becomes less challenging, which results in progression into less stressful and more lucrative areas of the property industry.

"The myriad of tasks to be completed and how mundane and challenging the range goes...I wouldn't do it for the world!" (Industry and User Interviewee on management agents).

/ Management agents work in a professional capacity within a highly personal and emotive environment. The management agency is often the branded layer that unit owners and residents associate with the management of the complex /

Researcher viewpoint



From the conflicted position of being a management agent, I can sympathise with the viewpoints of many interviewees and have experienced many of the issues in my working life. I have spent a significant amount of time explaining to new property managers that things are not their fault. It is easy to blame property managers, but I would also suggest that property managers are often to blame. The depth and breadth of knowledge expected from a property manager is diverse, ranging from law to building construction, debt collection and accounting, insurance and gardening. Licencing has helped, as has greater knowledge in the industry.

/ There is a lack of information available to volunteer amateur directors about what their roles and responsibilities are. The lack of availability of training or any impartial advisory body leaves the board in a very difficult position, often relying on the management agent for advice and guidance without an ability to challenge it /

Owners' Management Companies

It was acknowledged amongst all interviewees that the current framework and structure requires review and regulation, and that *"in an area that's so crucial to the effective function of Multi-Unit Developments as a viable and attractive living option for people, we need something more sophisticated"* (Government Interviewee).

"Thankless task managing any cohort greater than 10 people let alone 100... more transparency and how the issues are explained to OMC directors and members helps takes the anxiety out of it..." (User Interviewee).

One director interviewed offered that the reason for becoming a director was that he *"was the only one in his development interested"* and that it was *"impossible to recruit new directors and people are scared of getting all the work and being asked to do everything"*.

Other interviewees suggested that there was *"no understanding of management company framework"* and that the *"consumer in Ireland is ignorant of what comes with apartments"*.

The volunteer role of an OMC director is a thankless task. The ideal director could be a civic-minded, selfless individual who is time-rich, reasoned, experienced and knowledgeable

about a vast range of issues, including buildings, facilities, company law, accountancy, banking, health and safety, flora and fauna, waste management, conservation, procurement and debt collection, while being open-minded enough to take on the views of their co-directors and co-owners.

OMC directors are entrusted with the executive decision-making powers of the OMC; many will delegate to management agents while some will hold their powers dear for a number of reasons. Ultimately, they will be responsible for the repair, maintenance and operation of a multi-million euro property, and the operation of service charge and sinking fund schemes worth thousands of euro (or much more). They will decide on service levels, appoint contractors and agents, and decide when to enforce lease covenants on their neighbours.

There is a lack of information available to volunteer amateur directors about what their roles and responsibilities are. The lack of availability of training or any impartial advisory body leaves the board in a very difficult position, often relying on the management agent for advice and guidance without an ability to challenge it. That is a thankless task and carries a disproportionate level of responsibility.

"An entity should be there to give independent advice, not necessarily regulatory, but something well-funded by government. This would help provide information to OMC members and directors, as well as informing directors of their responsibilities" (Government Interviewee). An OMC director noted that *"how to run an AGM, what the directors' responsibilities are, there is nothing out there"*.

Researcher viewpoint

There is the suggestion that paid, independent directors with particular skillsets could be appointed to work alongside volunteer directors. These directors would take the position of objective and impartial contributors, guiding the board of directors through aspects of corporate governance, decision-making, and challenging advice. It is also worth noting that the same independent directors could be removed by the members of an OMC at a general meeting, where the independent directors themselves do not have a right to vote. Directors should be trained, and be more demanding of members, advisors and management agents, to operate their OMC in a more democratic and transparent manner.





/ There are no difficulties where there are long leasehold interests, where covenants are enforced, and people comply. Where people do not comply, there needs to be a mechanism to enforce compliance. Other jurisdictions have a culture of compliance; Ireland does not, and there is no ambition to change that culture /

Collection of service charges

Collecting service charges from owners can be difficult, and there is a feeling that taking legal action is costly and time-consuming, and that there is a burden of evidence placed on the OMC to prove that the debt was due.

Arising from an interview with one solicitor who is very involved in the area, it is suggested that there is no issue with the legal structure. There are no difficulties where there are long leasehold interests, where covenants are enforced, and people comply. Where people do not comply, there needs to be a mechanism to enforce compliance. Other jurisdictions have a culture of compliance; Ireland does not, and there is no ambition to change that culture.

It is clear from discussions with advisors or agents to OMCs that there is a sense of powerlessness. There is a feeling that lease covenant enforcement is not as absolute as it should be, that taking legal action is lengthy and costly to the OMC, and that the introduction of mediation as an alternative to the courts is seen as a compromise when most covenant breaches are absolute.

A User Interviewee highlighted an issue with mixed tenure, where *"although the majority of houses don't pay, they receive all the benefits included in our budget and even though the apartments pay, we don't receive all the services included in our budget"*. It is not greatly understood that OMCs are funded by service charge payments of their members alone.

Recognition is needed that an OMC is *"a small business ...and needs money, debt levels can be high and there is no adverse consequences for debtors"* (User Interviewee).

Many unit owners will seek service before payment or withhold payment due to poor service. This is counterproductive, as the less funds an OMC has, the fewer services it may provide.

Service charge collection is the lifeblood of an OMC. The *"importance of financial stability of the OMC is lost on most owners when it comes to dealing with the OMC"* (User Interviewee).

There were repeated suggestions that legal recourse was *"expensive and arduous"* and that it was better to *"seek a proposal before going legal"*. (User Interviewee)

Researcher viewpoint



There is a cultural issue in Ireland with the payment of service charges. Managing cash flow in poorly funded OMCs is stressful. Managing relationships with service providers when payment is slow and late does not lead to constructive and happy working relationships. These problems give OMCs a poor reputation among independent contractors working for them. The MUD Act and requirement to approve service charge budgets at general meetings has made the entire process more transparent and the culture is shifting towards a willingness to pay, although it remains lower on priorities than it should.

/ Service charge budgets prepared with little room for discretionary expenditure can lead to deficits or deterioration in services /



Sinking funds and service charge levels

There is an overall feeling that sinking funds and service charge levels are inadequate, but the unpopular decision to strive to increase costs is not relished. There was some confusion over building investment funds and MUD Act requirements.

"I would fear that the sinking fund is not adequate, a lot of people questioning the

budget and trying to get service charges down. Reducing the service charge is legitimate when there is waste or excess" (User Interviewee). This reflects a lot of thinking on service charges and sinking funds. Focusing on costs rather than service is a trait of many OMCs, boards and agents. Service charge budgets prepared with little room for discretionary expenditure can lead to deficits or deterioration in services. As prices increase in a rebounding economy, one interviewee remarked that *"we are moving towards a pinch point where the amount of spending is just about covered by the service charges"*. This reflects the nature of expenditure incurred by OMCs. In times where employment rates are high, pressure is placed on contractors to raise wages, which has an impact on all labour-related works in OMCs. In addition, energy and insurance costs rarely fall, and in an environment of increasing health and safety requirements, the costs of maintaining life safety systems and plant and equipment continue to rise.

Researcher viewpoint

I recently reviewed a lease for a well-located Dublin apartment, purchased new in 1997 for £55,000, with an initial service charge payment of £940, or some €1,200, for the first year, representing 1.7% of the purchase price. The most recent apartment sale in the development was at a price of €615,000, with a current service charge of €2,200 representing 0.36% of the value of the apartment. Service charges are not aligned to capital values of apartments; however, this example clearly shows the differing levels of inflation in capital values and service charges over the last 20 years. OMC boards' and members' attitudes should focus on delivering value for money in a service and standard-led environment, seeking to improve the living experience for residents. All too frequently, it becomes a race to the bottom for costs and each invoice is viewed as a starting point for negotiation.



Focus groups

Apartment Owners' Network

As part of this research, AON allowed the research team to devote one of the Network's open monthly meetings to a focus group. AON is a volunteer led, independent, non-party political organisation that represents the interests and views of owners and OMCs in Ireland.

The positives of apartment living were attributable to location, proximity to facilities, convenience and, on a wider note, sustainable land use and positive environmental impact. Some of the negatives of apartment living discussed included:

- Conduct of neighbours/noise
- Storage space/design
- Flexibility of layout for different life cycle stages
- Poor quality construction/building defects

When attention was turned to the OMC structure, the following issues arose:

- Success is too dependent on volunteer directors
- Building defects and recourse to developer
- No dispute/complaint process
- No impartial education or advice available
- Service charges are too low
- No sinking funds
- Attitude of courts/costs/delays

Regarding management agents, the issues identified were:

- Clear communication lines being imperative, across board, members, and residents
- Clarity of service required; tasks delegated and clear expectations regarding service delivery
- Collection of service charge levies
- Slow to respond

Of those present, only 56% said they adequately understood the relationship between management agents and OMCs. Over 50% felt that management agents

do not do a good job; 25% thought that service charge collection was the most difficult aspect of their job. 30% of attendees would not become a director of an OMC. When asked what they would improve about apartment design, the majority wanted more space.

Clúid Housing

Housing managers from Clúid offered some insight. As they are providers of housing, deal with managing agents, and OMCs as unit owners, and deal with residents, there is some valuable insight available.

Overall, there was agreement that we need to build more apartments and that, for density purposes, it is the right housing model moving forward. Size, and lack of outdoor space, were the main issues identified in relation to apartment design. The biggest risk to OMCs was the difficulty with collection of service charges.

In the operation of OMCs, the issues raised were:

- Legacy of building defects
- Accommodation not ideal for families and does not cater for growing/larger families
- Directorship training and more directors needed
- Adequacy of sinking funds
- Inconsistencies – OMCs differ from block to block

The housing managers were divided on whether they believed the OMC structure works as a method of co-ownership. However, when elaborated on, the issues identified were the operation rather than the structure, and the lack of empowerment available to the OMC to enforce lease covenants. Most believed that service charges delivered good value for money which, coming from professionals working in the built environment, is positive feedback. The responses were more divided on the matter of design and suitability for families and, surprisingly, on high-rise apartment buildings. The response was an emphatic negative when asked about



56% of those present said they adequately understood the relationship between management agents and OMCs



Over 50% of the focus group felt that management agents do not do a good job



25% of attendees thought that service charge collection was the most difficult aspect of an agent's job

/ Many owner-occupiers stated that they had never been asked if they would become a director of their OMC but confirmed that they would consider it /

the quality of facilities and infrastructure in place for new developments.

Case studies

As part of the study, research was carried out on three apartment complexes in Dublin; interviewing both owner-occupier and non-owner residents.

The apartment blocks vary in age and location, with one building located in a mature part of North Dublin, built in the 1970s, another being a large

development of mixed use, developed in the mid-2000s in an emerging and successful district of North West Dublin, and a third being an estate of almost 200 apartments in South Dublin, developed in 1997.

Research measured satisfaction with the operation of the OMC, amongst other questions. In order to measure satisfaction with the OMC it was necessary to ascertain if the occupier was happy overall with their apartment and location, as it was felt that dissatisfaction with this would adversely influence satisfaction with the operation of the OMC.

Table 5: Results of Door to Door Survey at 3 Multi-Unit Developments

Question	Mid-2000's N/W Dublin	1997 Southside Dublin	1970's North Dublin
Number of respondents	59	50	15
Number of owner occupier	24%	36%	27%
Are you or would you become a director of the OMC?	14%	8%	5%
Are you happy with the apartment overall?	83%	83%	73%
Are you happy with the location of the apartment?	88%	96%	93%
Why did you choose the apartment?	Location/Amenities	Location	Location
Are you satisfied with the design of the development and apartment block?	86%	86%	61%
Are you happy with the upkeep of the development?	78%	89%	83%
Do you know what the OMC is?	44%	44%	87%
Do you know the difference between an OMC and the Management Agent?	22%	80%	100%
Have you attended a general meeting of owners? (Owners only)	62%	39%	75%
Would you attend a general meeting of owners in the future? (Owners only)	100%	34%	75%
Do you think your service charges are good value for money?	29%	100%	75%
Do you know what a sinking fund is?	100%	100%	100%
Have you heard of the MUD Act?	22%	66%	50%

The questions on the operation of the OMC were asked only of owner-occupiers, and responses do not vary significantly from the satisfaction levels with the standard of upkeep of the development.

Research would indicate that tenants were not well informed in relation to OMCs, and associated the common areas more with the management agent. This viewpoint was also common amongst owner-occupiers. Negative comments largely related to specific issues experienced by residents, that they had raised when they had needed to. Many negative comments related to crime, behaviour of other residents, and specific repair issues, rather than any overall feeling of disenfranchisement.

As the overall satisfaction rate was very high, it would suggest that residents and owners did not feel that there was reason to complain about the operation of the OMC. This would correlate with anecdotal evidence of attendance at OMC general meetings, when poor attendances typically indicate a general sense of satisfaction with the operation of the OMC and estate.

The majority of owner-occupiers had at some point in time attended a general meeting of their OMC, and were aware of the difference between the OMC and the management agent. They were also aware of the role of the directors. Interestingly, many owner-occupiers stated that they had never been asked if they would become a director of their OMC but confirmed that they would consider it. As the election of directors is a required agenda item at annual general meetings, it might suggest that the formal nature of the meeting does not encourage owners to come forward to act as directors.

Summary

There are many positives to take from the qualitative research element. In essence, the criticisms of the OMC structure would appear to refer to its operation, rather than relating to a fundamental flaw in design.

The opposition to apartments derives from a lack of control in building construction, poor design, and poor implementation by our local authorities in the provision of facilities before development takes place.

The barriers can be overcome and the problems solved by direct intervention from government. This intervention is intended to change the way in which apartment developments are planned, to focus on the lived experience and the greater built environment, and delivery of infrastructural offerings as the occupiers arrive.

In addition, the strengthening of powers of the OMC will provide the catalyst for the cultural change required to empower the collective over the individual in co-operative living environments, and introduce micro-societies built on mutual respect.





**Key recommendation:
A regulator for OMCs
on a statutory basis**



Recommendations

Recommendations

Summary

The key recommendation of this report is that the Government establish a regulator for OMCs on a statutory basis. The functions of the regulator would be:

- To offer guidance on all aspects of the operation of OMCs
- To maintain a register of OMCs and process annual returns to incorporate additional return requirements, thereby ensuring compliance within the sector by OMCs
- To collect data through the annual returns process in respect of expenditure trends, the size of the sector and monitor variances in service charge levels and collection
- To provide a dispute resolution process through an online tribunal system
- To impose sanctions on OMCs for non-compliance
- To appoint independent directors as a sanction on OMCs, or at their request
- To provide mandatory training to OMC directors
- To provide individual guidance and advice to OMC members and directors
- To carry out research in the interests of OMCs and unit owners
- To provide an inspection regime for new apartment developments to ensure compliance with building regulations and fire safety
- To provide an inspection regime for existing apartment developments to ensure compliance with building regulations and fire safety
- To provide emergency assistance where an OMC fails in its duties or abilities

In addition to the creation of the office of the regulator, this report recommends that the MUD Act be amended:

- 1 To reflect the creation of the office of the regulator
- 2 To increase the reporting duties of OMCs and to transfer the Companies Registration Office annual return requirement to the new regulator's office
- 3 To provide to the regulator the relevant jurisdiction for all disputes arising in an OMC, including around the payment of service charges
- 4 To oblige OMCs to register with the regulator
- 5 To oblige OMCs to carry out fire safety audits every five years and submit a certificate to the authority confirming same
- 6 To oblige OMCs to carry out a Building Investment Fund report every five years and submit a statement of adequacy in relation to same
- 7 To oblige OMCs to submit confirmation of insurance with their annual return, and to carry out a reinstatement valuation (where applicable) every five years, and to submit a statement of adequacy in relation to same
- 8 To submit an annual auditor's report with its financial statements
- 9 To prescribe the format of annual financial statements to allow the regulator to issue specific guidance and training for their preparation and interpretation
- 10 To oblige directors to undertake training within six months of their appointment
- 11 To oblige developers to provide a builder's bond, of 2% of construction value, to be held until 12 months after the completion of the estate
- 12 To oblige the OMC to have a building inspector attend and prepare a report in advance of the release of the developer's bond
- 13 To develop a prescribed method of periodic inspection during the construction of an apartment building by an independent building inspector
- 14 To oblige the developer to prepare a full maintenance schedule for the operational costs for the first year of the estate, disregarding any warranty or maintenance periods
- 15 To oblige the developer to prepare a full Building Life Cycle Report (BLCR) costing, with individual contributions set out from year one and to be incorporated in the initial charge on closing
- 16 To prescribe the agenda for annual general meetings
- 17 To allow for tenant representation at board meetings in certain circumstances
- 18 To place more structure around the transitional period between developer and OMC control in new developments

1



Recommendation 1

Sinking funds

- Each OMC to be required to commission a BLCR to identify the renewable elements of the MUD, the replacement cost of same, and the annual contribution required from owners to fund the replacements.
- The OMC should be required to circulate the report to all members and consider the report at the next annual general meeting.
- The OMC will be obliged to evidence this action at every five-year interval.
- The OMC will be obliged to confirm the level of sinking fund on an annual basis as part of its annual return to the regulator, and confirm whether the level is above or below the recommended level contained in the BLCR.
- The OMC will make the most recent report available to all members at any time.
- Clarify the wording in the MUD Act to confirm that sinking fund contributions should be levied in accordance with title provisions.

Objective of recommendation

To encourage OMCs to obtain professional advice regarding the recommended level of sinking fund and to encourage transparency by sharing the report with owners. To include the sinking fund recommended level and actual level, disclosing the sinking fund status of the OMC to potential purchasers. To clarify the current MUD Act wording.

2



Recommendation 2

Fire safety

- Each OMC with a Fire Safety Certificate every five years to be required to commission a fire safety report from a suitably qualified building professional. The report should identify works required to be carried out, and any recommended upgrades since the last report based on industry practice.
- The OMC will be required to circulate the report to all members within 60 days of its completion.
- The OMC shall make the most recent report available to all members at any time.
- The OMC shall, when carrying out any alterations to the building or its fabric, obtain confirmation that the works do not interfere with the integrity of the Fire Safety Certificate.
- Where the OMC carried out works that interfere with the fire strategy for the MUD, they must obtain professional advice from a suitably qualified building professional and, if necessary, advise the fire officer. Any amendments must be certified, and such certification submitted to the authority as part of the OMC online data.

Objective of recommendation

To ensure a comprehensive regime of fire safety is in place in the interests of all MUD residents.



Recommendation 3

Housing Regulatory Authority

- The establishment of a Housing Regulatory Authority, with responsibility for OMCs, under the Department of Housing, Planning & Local Government.
- The Authority will have responsibility for developing and maintaining a database of OMCs in Ireland and their annual return and disclosure processes, together with collecting an annual registration fee for each OMC. This return will exempt the OMC from Companies Registration Office returns. (Data and records returned will be similar to current returns, with additional items as detailed).
- The Authority will hold as part of its database a register of members, directors, agents, auditors, and other officers of OMCs.
- The Authority will provide a public database of OMCs online, with access to specified data on the company, including disclosures contained in its annual return.
- The Authority will collate and analyse data received as part of the annual return and disclosure process, to monitor trends in the sector in order to influence future policy.
- The Authority will receive, store and maintain Fire Safety Certificate applications, confirmations and amendments as part of its OMC database for the benefit of the OMC.
- Provide consumer guidance and assistance for all owners, users and occupiers in OMCs in Ireland, including a guide to buying a property in a MUD.
- Provide an inspectorate regime for OMC compliance with legislation, building regulations and fire safety.
- Provide emergency assistance to OMCs where the company fails in its obligations, in the interests of owners and residents, to include the imposition of directors, agents or other officers as it sees fit.
- Provide mandatory training to directors of OMCs and other related parties.
- Provide guidance, assistance and advice to OMCs, related parties and the public in matters relating to OMCs.

Objective of recommendation

To regulate OMCs and provide a structure of support and training for the sector. To establish a culture of transparency in the sector, and enable oversight by the Authority of the compliance levels of OMCs. To hold, and allow to be maintained, significant data for the benefit of the OMC.

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**Recommendation 4****Regulatory Authority Tribunal**

- The Authority will operate a specialist Tribunal to adjudicate over disputes in OMCs, with jurisdiction similar to that of the Circuit Court.
- The Tribunal will operate an online dispute process for a small fee, payable on acceptance of application of the dispute.
- The Tribunal will be open for applications from anyone, in relation to any breaches of covenant or statute.
- The Tribunal will have authority to adjudicate over all service charge debt, breaches of lease provisions, and breaches of house rules.
- The Tribunal will have authority to impose sanctions or fines on any party.
- The Tribunal will have the authority to impose an independent director on an OMC if appropriate, and the cost of the director will be added to and paid from the OMC service charge.
- The Tribunal will publish all disputes online, available to the public.
- The Tribunal will have the authority to award costs.

Objective of recommendation

To introduce a specialist Tribunal with intimate knowledge of the sector, to process complaints efficiently and provide an effective and economic alternative to the courts. The public register will provide valuable case history to inform OMCs and other stakeholders and set the tone for resolution of OMC disputes. To improve the ability of OMCs to collect service charges and sinking fund levies, and reduce the cost of obtaining judgement.

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**Recommendation 5****Regulatory Authority inspectors**

- The Authority will engage building inspectors to carry out periodic inspections of existing MUDs and report on health and safety and fire safety procedures in place.
- The Authority will engage building inspectors to carry out periodic inspections on new apartment buildings or buildings of shared structure, to ensure compliance with building regulations.
- The Authority may engage other inspectors as it sees fit to inspect and examine any operations and processes of OMCs, to ensure compliance with law.

Objective of recommendation

To introduce an inspection regime in the interests of all owners to ensure that their building and OMC are operating within the law.



Recommendation 6

Owners' Management Companies – returns to the Authority

- OMCs will be exempt from Companies Registration Office returns, and will instead make their returns to the Authority.
- OMCs will be required to return financial records in a format specified by the Authority.
- OMCs will be required to maintain a database of members/owners with the Authority via an online portal.
- OMCs will be required to maintain a database of directors, officers, agents and auditors via an online portal.
- OMCs will lodge an annual data return, disclosing relevant non-financial data, including insurance policy details, fire safety statements, and BLCRs.
- OMCs will maintain data in relation to the number of units within a MUD, service charge levels, debtor performance, and specific outlay, to enable the Authority to digest data and review trends in the interest of the sector.
- OMCs will disclose to the Authority any notices served by any other Government department or office.
- An OMC will pay its annual registration fee to the Authority on submission of its annual return.
- OMCs will pay penalty fees for late filing or non-compliance.

Objective of recommendation

To enable the Authority to keep a directory of OMCs in Ireland and measure their performance. To make certain data available to the public, in order to allow the review of relevant non-sensitive data in the public interest.



Recommendation 7

Lease covenant and house rule enforcement

- Legislation to be altered to make the enforcement of lease covenants and house rules more robust.
- OMCs and related parties may apply to the tribunal for adjudication over breaches of lease covenants or house rules.
- Specific prohibitions on nuisance and unauthorised alterations to property to be enforced.
- Authorise the Tribunal to apply sanctions and damages for breaches of covenants and house rules.

Objective of recommendation

To assist in ensuring the quiet enjoyment of their properties by all residents in the MUD, and to encourage compliance by all owners and residents.

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**Recommendation 8**
Role of directors

- Obligation on directors to undertake mandatory training within six months of appointment/election as director of an OMC. The training is to be provided by the Authority and is valid for a period of seven years from completion.
- The roles of directors of OMCs needs to be confirmed in statute (to specify that they act in the interest of all owners/members).
- The Authority should have the ability at a future date to impose a Code of Conduct for OMC directors.
- Rotation of directors should include the express provision for a director to be re-elected after a term of three years.
- Consideration should be given to allowing members to view minutes of directors' meetings, with personal data redacted.
- Empower the Authority to disqualify a director from acting as a director of an OMC, without such disqualification interfering with the individual's standing to act as a director of other types of companies.
- Allow the OMC to authorise remuneration for directors at a general meeting.
- Allow the appointment of an independent director for a fee at the request of the OMC, subject to the approval of the Authority. The fee to be payable from the service charge.
- Allow for the appointment of an independent director for a fee by the Authority, on its own initiative or at the request of the OMC board.
- Confirm that voting rights of directors are not tied to voting rights of their OMC membership holding.

Objective of recommendation

To offer clarification on the role of directors of an OMC and to enable the OMC to procure expertise at board level, if desired. To ensure that proper rotation and representation are present at board level. To empower the Authority to introduce a Code of Conduct for OMC directors following a review of current practices.

**Recommendation 9****OMC communication obligations**

- Obligation of OMCs to issue an Annual Report in accordance with the MUD Act as a separate report to the financial statements.
- Obligation to issue financial statements in prescribed form.
- Obligation to issue service charge budgets in advance of meeting, for approval.
- Obligation to identify for the members the directors, officers, management agent and auditor of the OMC.
- Obligation to keep owners and residents informed of the house rules.
- Obligation to disclose material items to members within 60 days of the directors becoming aware of the item.

Objective of recommendation

To encourage transparency between the board and the members of the OMC, and to reduce the burden of knowledge placed on the directors.

**Recommendation 10****Ability of OMC to borrow**

- Authority in statute for the OMC to borrow funds from a relevant lender.
- The process that the OMC must follow to borrow funds must be detailed in legislation.
- All borrowings made by the OMC must be to fund specific projects, and approved at a general meeting of owners convened for purposes to include the passing of a resolution to authorise the board to borrow funds.
- The members must be made aware of the proposed resolution, and be provided with documentation in relation to the loan agreement and area of expenditure, at least 10 days prior to the meeting.
- Details of the period of repayment must be included in the documentation, clearly indicating the repayment cost per unit.

Objective of recommendation

To authorise OMCs to borrow money to fund specific projects, subject to the agreement of members by resolution at a general meeting of owners.

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**Recommendation 11**
Mixed use schemes

- Review provisions in the MUD Act in relation to mixed use MUDs.
- Allow the Authority to adjudicate over the OMC structure regarding service charge apportionment, director representation, and voting rights.
- Permit the Authority to appoint directors to represent smaller stakeholders, in the interests of equity.

Objective of recommendation

To prevent the oppression of minority shareholders, and ensure that the interests of all members are represented at board level.

12

**Recommendation 12**
Management agents

- Specify that when engaging an agent OMCs must engage licensed property service providers, holding a relevant license.
- Authorise the Tribunal to include the management agents in any adjudication where the Tribunal believes that there is cause.

Objective of recommendation

To ensure that OMCs are afforded the protections under the PSRA licensing regime. To prevent the frustration of dispute resolution by the Tribunal determining that jurisdiction for the complaint lies with the PSRA, rather with the Tribunal itself.



Recommendation 13

Insurances

- Specify the policies of insurance that each OMC must obtain to protect its members.
- Oblige OMCs to inform owners and members of the nature of insurance and the excesses on the policy.
- Oblige OMCs to disclose any changes in their insurance policy or cover as soon as possible, but within 14 days of cancellation or 28 days of a material change, endorsement or alteration to cover.
- Oblige the OMC to disclose insurance details as part of its Annual Return to the Authority.
- Oblige the OMC to carry out a building reinstatement valuation every five years, and to return the valuation certificate to the Authority.
- Oblige the OMC to inform all owners and residents, on an annual basis, that the insurance policy in place does not extend to their home contents or their own liability.

Objective of recommendation

To ensure that the OMC procures adequate insurance cover, and keeps its members informed of the nature, extent and limitations of cover in place.

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Recommendation 14

Financial statements

- Remove entitlement to audit exemption for OMCs.
- Prescribe a format for preparation of accounts for OMCs so that standard data is disclosed in each set of accounts.
- Format to include detailed income and expenditure analysis, in prescribed form, to enable data analysis, industry-wide.
- Format to include detailed assets and liabilities analysis, to enable debtor and sinking fund analysis, industry-wide.

Objective of recommendation

To provide to the owners the protections associated with an audit. By homogenising OMC financial statements, to enable the Authority to provide guidance and training on OMC accounts to the public and directors.

14



90,000

extra apartments will be needed
in Dublin to meet population
growth in the next 20 years

7 /

Conclusion

Conclusion

*In **Designing the Compassionate City**, Jenny Donovan writes: “the players that influence the relationship between people and place can be generalised into three overlapping groups: government, civil society and industry” (Donovan 2018).*

/ Government has never recognised the complexity of fractional ownership in MUDs. Apartment owners have never been protected by legislation or recognised as a significant housing sector /

Government sets the political context for things to happen and how they should happen; Industry – through developers, builders, architects and other professionals involved in the built environment – are responsible for implementation, and Civil Society is the end users; the enjoyers of the built environment, the individuals and populous that it is all delivered for, whether for financial reward or civic betterment.

Government has never recognised the complexity of fractional ownership in MUDs. Apartment owners have never been protected by legislation or recognised as a significant housing sector.

Government should recognise that embracing apartment living and ownership is positive for the nation and its growing population. The increase of higher density housing means that Government can provide transport and other infrastructure in an efficient manner. Local authorities and other state services (such as policing, education and healthcare) can capture a greater number of people within a smaller geographical area, making services more effective.

This recognition should also start a debate about the inequity of the Local Property Tax when based on value, when it is clear that local authorities can provide services more efficiently to high-density housing than to traditional housing having a greater geographical spread.

In Ireland, we have developed a built environment in our cities with little oversight, where soft legislation and industry influencers have taken the position of control, moulding our cities and homes. The failings of self-certification and Government to implement, not only a robust building control environment, but a framework for co-operative and communal living, have negatively impacted those in society for whose benefit Government and Industry are working.

In this report, it has been illustrated how other societies and jurisdictions have not left this important civil issue to Industry to define. They have had the foresight to impose restrictions and regulations for the betterment of society, and the enjoyment of the homes concerned.

We have set out rules for construction through building regulations since 1992, but could not hold anyone accountable for building defects until 2014. We have understood the need for regulation in our housing sector and introduced legislation regulating the private rented sector, social housing sector, and property service providers, without regulating OMCs. We have designed our regulation to confuse and create barriers to users of property, through separate agencies created for different segments of industry. Overall, one could take the view that the system is designed to avoid responsibility and decision-making, making it easier to identify another department or regulator that may be responsible.

Taking the view that Government exists for the good of society, and the promotion of society's interests over the interests of any individual, hence the need for laws, we cannot leave a fundamental requirement such as housing to remain in an unregulated or ambiguous environment.

On 1 November 2018, a number of stakeholders were invited to Clúid Housing, where initial draft recommendations were presented.

It was encouraging to receive significant support from all present in respect of all recommendations offered. The significant tone of the room was that the country did not need another regulator in the property and housing area. The consensus, confirmed by a show of hands, suggested that certain existing organisations could be merged and expanded.

This report recommends a Housing and Property Regulator to bind the Property Services Regulator and Residential Tenancies Board together in a new, all-encompassing regulator for housing and property. It would not only regulate residential tenants in the public and private sectors, and property service providers, but also include AHBs, developers, construction companies, and OMCs. The use and amalgamation of the Property Services Regulator and Residential Tenancies Board to provide a single location for all housing and property issues, data collation, dispute resolution, guidance and education, would provide a meaningful civic office, delivering widespread services in housing. Is housing not important enough for this?

/ The failings of self-certification and Government to implement, not only a robust building control environment, but a framework for co-operative and communal living, have negatively impacted those in society for whose benefit Government and Industry are working /



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Appendices

Appendix 1: Periodic Information Certificate as required under Ontario regulations



Ontario
Ministry of Government
and Consumer Services

[Print Blank Form](#)

Periodic Information Certificate
Information for owners about the
corporation

Instruction

This PDF form can be filled out electronically and then saved or printed. When filled out electronically, the form is dynamic – for example, text boxes will expand as you enter information, and checking certain boxes may cause items to appear or disappear as necessary. The blank form can also be printed in full, and then filled out in hard copy. If you are filling out the form in hard copy and you need more space, you may enclose additional sheets of paper with the form.

1. General information about the corporation

Name of the condominium corporation _____

The address for service of the corporation

Unit Number	Street Number	Street Name	PO Box
City/Town	Province		Postal Code

The condominium manager, management provider, or any other person responsible for management of the property ☐ Not applicable

Name	Address for Service	Email Address (optional)
1.		

[Add item \(+\)](#)

Additional ways to deliver requests for records to the corporation

The corporation has a mailing address for receiving requests for records, in addition to the addresses for service identified above ☐ Not applicable

Unit Number	Street Number	Street Name	PO Box
City/Town	Province		Postal Code

The corporation has an email address or other method of electronic communication for receiving requests for records, in addition to the addresses identified above: ☐ Not applicable

Instruction for the person filling out this form: If a corporation keeps a record in electronic form, the board is required to pass a resolution setting out the method of electronic communication that a requester can agree to (in a request for records) as the record delivery method. If the corporation has passed such a resolution, the method of electronic communication is:

Number of leased units

The corporation has received notice under s. 83 of the *Condominium Act, 1998* that ____ unit(s) was/were leased during the current fiscal year.

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Page 1 of 4

2. Directors and officers of the corporation

Name	Position/Title	Address for Service	Email Address (optional)
i.	<input type="checkbox"/> Director <input type="checkbox"/> Officer		

Add item (+)

3. Insurance information about the corporation

The corporation has obtained and maintained all of the insurance required by the *Condominium Act, 1998* or that is otherwise legally required, at all times during the current fiscal year.

☐ Yes ☐ No

If an owner, a lessee of an owner or a person residing in the owner's unit causes damage to the condo property, the condo corporation may be required to add the cost of repairing the damage or the deductible limit of the corporation's required insurance policy, whichever is less, to the owner's common expenses, or the corporation may seek to recover the amount from the owner in another manner. This could be affected by a by-law the corporation may have passed under s. 56 (1)(i) of the *Condominium Act, 1998*.

Complete the following information for each insurance policy of the corporation:

Insurance Policy (Instruction: Provide a brief description)	Deductible (Instruction: Provide a brief description of the deductible and the amount of the deductible)	With respect to this deductible, the maximum amount that could be added to an owner's common expenses under s. 105 (2) of the <i>Condominium Act, 1998</i> or as a result of a by-law passed under s. 56 (1) (i) of the Act.
i.		

Add item (+)

The Corporation has obtained and maintained the insurance policy described in section 39 of the *Condominium Act, 1998*

☐ Yes ☐ No

The Corporation has obtained and maintained the insurance policy described in section 99 of the *Condominium Act, 1998*

☐ Yes ☐ No

The Corporation has obtained and maintained the insurance policy described in section 102 of the *Condominium Act, 1998*

☐ Yes ☐ No

The corporation has or had a legal obligation to maintain insurance, aside from the insurance described in section 39, 99, and 102, at any time during the fiscal year

☐ Yes ☐ No

Information about the "standard unit"

☐ The standard unit is described in a by-law made under s. 56 (1) (h) of the *Condominium Act, 1998*

☐ The standard unit is not described in a bylaw made under s. 56 (1) (h) of the *Condominium Act, 1998*

If the standard unit is not described under s. 56 (1) (h) of the *Condominium Act, 1998* the corporation may have a schedule, referred to in s. 43(5)(h) of the *Condominium Act, 1998* setting out what constitutes a standard unit

☐ A certificate or memorandum of insurance for each of the corporation's current insurance policies is enclosed with this information certificate.

If no certificate or memorandum of insurance for each of the corporation's current insurance policies is enclosed, then an explanation may be provided here

4. Financial information about the corporation

Budget

The budget of the corporation for the current fiscal is accurate and may result in:

- ☐ a surplus of:
☐ a deficit of:
☐ neither a surplus nor a deficit

Reserve Fund

The balance in the reserve fund _____ Date (yyyy/mm/dd) (the last day of the quarter to which the information certificate relates)

The balance of the reserve fund at the beginning of the current fiscal year was:

In accordance with the budget of the Corporation for the current fiscal year, the annual contribution to be made to the reserve fund in the current fiscal year is:

The anticipated expenditures to be made from the reserve fund in the current fiscal year, in accordance with the corporation's budget, amount to:

Description of expenditure	Amount
i.	

[Add item \(+\)](#)

The current plans, if any, to increase the reserve fund under a plan proposed by the board under subsection 94(8) of the *Condominium Act, 1998* for future funding of the reserve fund are

The corporation has an outstanding claim for payment out of the guarantee fund under the *Ontario New Home Warranties Plan Act*:

- ☐ Yes ☐ No

5. Legal actions relating to the corporation

The corporation is currently a party to a legal action:

- ☐ Yes ☐ No

6. Outstanding judgements relating to the corporation

The corporation currently has outstanding judgments against it:

- ☐ Yes ☐ No

7. Disclosure information from directors of the corporation

- ☐ Copies of statements and information provided to the board during the current fiscal year under section 11.10 of O. Reg. 48/01 under the *Condominium Act, 1998* are enclosed with this information certificate

8. Compliance information about the corporation

The corporation has complied with all returns obligations, if any, under Part II.1 of the *Condominium Act, 1998* during the current fiscal year:

- ☐ Yes ☐ No

The corporation complied with its assessment fee obligations, if any, under s. 1.30 (6) of the *Condominium Act, 1998* during the current fiscal year:

- ☐ Yes ☐ No

A copy of any compliance order made by a Registrar directing the corporation, or a director or officer of the corporation, to comply with subsection 1.30(6), any provision of Part II.1 or subsection 132 (9) of the *Condominium Act, 1998*, is enclosed with this certificate, unless the corporation, director or officer of the corporation, has taken the required steps for a hearing by the License Appeal Tribunal in respect of the compliance order, under section 134.1 of the *Condominium Act, 1998*.

☐ Yes ☐ Not applicable

9. Other information about the corporation that is required by a corporation's by-laws

☐ Not applicable

☐ A by-law of the corporation requires additional information to be included with this certificate. The additional information required by the by-law is included below, or is enclosed with this certificate as a separate document.

Note for common elements condominium corporations: If your corporation is a common elements condominium corporation, all references in this form to "unit(s)" should be read as references to "common interest(s) in the corporation," and all references to "unit owner(s)" should be read as references to "the owner(s) of a common interest in the corporation".

Dated this _____ day of _____, _____
day of month month year

[Save Form](#)

[Print Form](#)

[Clear Form](#)

Appendix 2: Australia model for tenant participation at board level

FACT SHEET

November 2016

Tenant participation

In a strata scheme

To find out what's happening where they live, tenants may attend meetings of the owners corporation.

In some circumstances, tenants may also be able to elect a tenant representative to sit on the strata committee, which looks after the day-to-day running of the strata scheme.

Tenants should also be aware of tenancy laws that apply. For details visit the Renting a home section of the Fair Trading website.

Check you are registered on the strata roll

The landlord, or property manager acting on their behalf, is responsible for completing a tenancy notice within 14 days of a new lease being signed. This information includes an address at which the tenant can be contacted. The landlord must give this to the owners corporation to allow a new tenant to be registered on the strata roll.

You need to be registered on the strata roll to:

- exercise your right to attend meetings of the owners corporation
- be communicated with (for example, receiving 7 days' notice of meetings, which you may wish to attend)
- be counted in the lots that are tenanted. This lets your strata management determine if your strata block is eligible to have a tenant representative on the strata committee.

Attending meetings of the owners corporation

Tenants (whose landlords have given notice of the tenancy to the owners corporation) can attend meetings of the owners corporation. A tenant cannot vote unless they are an authorised proxy, allowing them to vote on someone else's behalf.

Tenants may be excluded from meetings where financial matters are discussed. They also must gain the owners corporation's permission before they can speak at the meeting.

Option to have a tenant representative

In strata schemes where at least half of the lots are tenanted, the tenants have the right to nominate a tenant representative to the strata committee.

The tenant representative is entitled to:

- receive a copy of the agenda and any minutes of meetings held
- attend and speak at strata committee meetings. However, they can be asked to leave the meeting if financial issues are to be discussed.

The tenant representative does not have a vote. They cannot make up the quorum of a meeting (that is, the minimum number of people needed for a vote to be valid).

Nominating a tenant representative

The strata committee determines if at least half of the schemes are tenanted. A person entitled to convene an annual general meeting (AGM) must advise eligible tenants (those who appear on the strata roll) of the meeting to select their representative.

The meeting to elect a tenant representative can be held at any time before the AGM but must be called at least 14 days beforehand.

Tenants must receive notice of the meeting at least 7 days in advance of it being held, which can be:

- sent to tenants' address on the strata roll
- posted on the scheme's noticeboard (if one is provided).

The meeting can be chaired by the chairperson of the strata scheme or a tenant nominated by the eligible tenants present at the meeting.

Tel: 13 32 20 www.fairtrading.nsw.gov.au

FACT SHEET

November 2016

An eligible tenant may nominate themselves, or another eligible tenant. The tenant representative is then to be determined by a majority vote of the tenants present at the meeting.

The quorum for the meeting is one person.

Landlords cannot prevent their tenant from nominating as a tenant representative.

At the coming AGM, the chairperson announces the name of the tenant representative who was elected. At the end of the AGM, the tenant representative's appointment officially begins.

Period of appointment

A person's term ends as a tenant representative when:

1. the person stops renting a property in the scheme
2. they resign in writing to the owners corporation
3. the following AGM (after the one at which the tenant representative is announced) ends.

If a tenant representative's appointment ends early, the secretary of the owners corporation must convene a meeting of eligible tenants to elect a replacement for the rest of the term.

By-laws

Each strata scheme has its own by-laws, which are a set of rules that cover things such as the behaviour of residents and the use of the property. The by-laws apply to all owners and residents of a strata scheme, including tenants.

Landlords or the property manager for the tenancy must give their tenants a copy of the current by-laws within 14 days of the tenancy agreement being signed.

If a tenant breaches a by-law, the owners corporation or managing agent (if their agency agreement gives them the authority) can serve a 'Notice to Comply with a By-Law' on the person who is breaching it. A continued breach may result in a penalty. For more details, visit the

By-laws in a strata scheme page on the Fair Trading website.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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Appendix 3: Questionnaires – Example

OMC research questionnaire – owner occupiers

Are you / Have you been a director of the OMC

Current ☐

Past ☐

Never ☐

The apartment

Right amount of bedrooms

Yes ☐

Too few ☐

Too many ☐

Scale of 1 to 5 how happy are you with the apartment taking into account space, design, fixtures, fittings and storage etc.

1
Poor

2

3

4

5
Excellent

Environment

On a scale of 1 to 5, how satisfied are you with the location of your apartment, taking account of transport, amenities, safety etc.?

1

2

3

4

5

What were your main reasons for choosing this apartment?

The development

On a scale of 1 to 5, how satisfied are you with the design and appearance of the apartment block?

1

2

3

4

5

On a scale of 1 to 5, how satisfied are you with the upkeep of the common areas in the apartment block?

1

2

3

4

5

Owners questions

Do you know what the Owners' Management Company (OMC) does?

Do you know the difference between the OMC and agent?

Have you been to an OMC Meeting?

If so what was the meeting like?

Would you go again?

Have you ever been asked to be a director of the OMC?

Do you know what a director does?

Would you consider becoming a director?

If not – why?

Have you had contact with the OMC or agent?

If so what kind – complaint or request for information etc.?

What happened?

How much is your service charge?

Do you think it represents good value for money?

Would you be prepared to pay more if necessary?

On a scale of 1 to 5, how satisfied are you with the operation of the OMC?	1	2	3	4	5
--	---	---	---	---	---

Do you know what a sinking fund is?

What do you think are the main problems with the OMC?

What could be done to make the OMC work better?

Have you heard of the Multi Unit Developments Act?

Do you have contents insurance for your apartment?



The Housing Agency

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Dublin 2

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e: info@housingagency.ie



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159-161 Sheriff Street Upper
Dublin 1

t: (01) 707 2088

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Company number: 212249

Registered charity number: 20029975

**For further information,
please visit:**

www.housingagency.ie

www.cluid.ie