



**An Gníomhaireacht
Tithíochta**
The Housing Agency

Engaging a Property Management Agent: Guidance for Owners' Management Companies



Introduction and Background

This guidance document consists of questions and points for consideration by owners' management company ("OMC") directors when selecting a property management agent for a residential multi-unit development ("MUD").

It is recommended that an OMC engage in a tendering and evaluation process with a minimum of three providers. In this way services and value for money from several agents may be compared. The appendix contains a sample cover letter that may be adapted by an OMC for use in a tender process.

It should be noted that this guidance material is not intended to be comprehensive. There may be other questions and points for consideration arising from the characteristics and circumstances of a particular MUD or OMC. The exercise by OMC directors of their independent judgement in light of the requirements of their estate and the information available to them will inform consideration of this material.

The terms "agent", "management agent", "property management agent", "property services provider", "licensee", and "provider" are used interchangeably. The terms refer to a provider of "property management services", as defined in section 2 of the Property Services (Regulation) Act 2011.

A provider of property management services to an OMC must hold a valid category D licence from the Property Services Regulatory Authority (PSRA). Details of licensed property management agents are available on the Register of Licensed Agents at www.psr.ie.

Detailed information on the licensing and regulation of property management agents, consumer protection, and complaints processes is available from the PSRA at www.psr.ie.

January 2021

The Housing Agency

53 Mount Street Upper,
Dublin 2, D02 KT73

t. (01) 656 4100

e. info@housingagency.ie

w. www.housingagency.ie

Contents

02

General
Considerations



03

Letter of
Engagement



03

Engagement
Costs



05

Communications



05

Financial Management
Considerations



06

Collection of
Annual Charges



06

Administration /
Company Secretarial
Services



07

Property
Management



07

Self-Managed
Estates



08

Appendix





General Considerations

The regulatory status, qualifications, and experience of an agent should be considered.

- Is the agent licensed by the PSRA? Ask for a copy of their PRSA licence. Check the Register of Property Services Providers at www.psr.ie for Category D licensed property services providers.
- Is the agent a member of a professional or trade body, such as the Society of Chartered Surveyors Ireland (SCSI), or the Institute of Professional Auctioneers and Valuers (IPAV)? Membership of a professional or trade body is not a licensing or statutory requirement, however it may be a signifier of competence and professionalism. Professional or trade bodies typically require members to adhere to codes of conduct, professional standards, or other rules and regulations.
- What is the agent's ownership structure? Is it a company, or a sole trader, or a partnership? Who owns the business?
- If the agent is a company, when was it incorporated? Company information is available from the Companies Registration Office (CRO) website www.cro.ie.
- If a sole trade or partnership, when was this commenced?
- Who are the directors, principals, and senior management of the agent, and what are their responsibilities?

OMC directors may wish to consider an agent's industry experience.

- What is the agent's reputation and track record in the sector?
- How many years' experience in the sector has the agent's senior management?
- How many estates or homes does the agent manage?
- Does the agent have experience of managing an estate of your size?
- Will the agent provide evidence of the longevity of its existing engagements?
- What member(s) of the agent's staff will be responsible for overseeing the management of your estate?

- What are the qualifications and experience of the agent's staff member(s) to be assigned to your estate? Do staff members hold the appropriate licence? Further information on licensing requirements is available at www.psr.ie.
- Does the agent operate any other related businesses, e.g. letting, auctioneering, or valuation services?
- How does the agent manage potential conflicts of interest?
- Has the agent had experience with the handover of documentation from your existing agent, if applicable? What is the agent's policy on hand over of documentation on termination of contract?
- Is the agent happy to discuss the outcome of any audit compliance inspections conducted by the PSRA?
- How does the agent demonstrate observance of the Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020 (S.I. No. 564 of 2020)? A plain English guide to the Minimum Standards is available at www.psr.ie.

References from agents' existing clients, and enquiries of third parties can be helpful.

- Does the agent offer references or testimonials from its existing client base?
- Is the agent happy for you to communicate with directors from other OMCs to which it provides services?
- Will the agent offer a reference from professionals with which it works, e.g. solicitors, accountants, engineers?
- Will the agent provide proof of financial status?
- Where the agent is a company, consider obtaining from the CRO www.cro.ie a copy of the agent's most recent statutory financial statements.
- Consider using commercial credit rating agencies to determine the financial health of the agent.
- Will the agent provide evidence of tax clearance? A licensed agent must have valid tax clearance.
- Seek proof of professional indemnity insurance and levels of cover.



Letter of Engagement

The Letter of Engagement ("LOE") (also known as a property services agreement, or contract for services) between the agent and the OMC is a very important document for both the OMC and the agent.

The agreement is a legally binding contract between the OMC and the agent. It should clearly outline in a very prescriptive manner all property services to be provided, and all detailed costs involved.

The PSRA has prepared a template LOE to be used between management agents and OMCs. It is available in editable format on the PSRA website www.psr.ie.

A LOE is a requirement under section 43 of the Property Services (Regulation) Act 2011 and protects both the OMC and agent.

A licensed property services provider (licensee) must have a signed agreement in the specified form in place within seven days of commencing to provide a property service.

Certain items must be completed in the contract. These are specified in the PSRA's template. Once the mandatory items are contained, the agent and the OMC may by agreement add or remove other terms and conditions.

Any amendment to the LOE must be in writing, or a new LOE signed by both parties. It may be preferable that a new LOE be signed.

Consider the services appropriate to your estate.

- What services will the agent provide under the contract? These should be clearly specified.
- What services are excluded? These should be clearly specified.

Consider the termination clause, and the implications for the orderly management of the estate and affairs of the OMC.

- What is the notice period for termination?
- What is the length of term, and are there standard provisions for renewal and periodic cost increases? Section 32 of the Multi-Unit Developments Act 2011 ("MUD Act") prohibits an OMC from entering into a contract that runs for a period in excess of three years' duration.
- Under section 32 of the MUD Act an OMC may not enter into a contract that provides for a penalty to be imposed on or damages to be paid by the OMC if the contract is terminated by it after a period of three years from the date of entry into the contract.



Engagement Costs

Key considerations for OMC directors are the costs of services and value for money.

- How is the agent's annual fee calculated? Is it charged on an hourly basis, or by the number of homes in the estate, or based on other factors such as performance metrics?
- What costs are over and above the agreed management fee? All fees should be contained in the LOE. This protects the OMC and the agent.
- Are there extra costs to attend regular meetings or additional meetings, either of the OMC board, or general meetings of the OMC members? Any additions should be in writing in the LOE and signed by both parties to the contract.
- At what intervals will the agent's fee be paid, e.g. yearly, quarterly, or monthly? This should be addressed in the LOE.
- In what way will the agent's fee be paid, e.g. by direct debit, or electronic funds transfer? This should be addressed in the LOE.

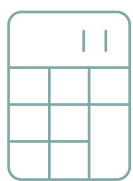




Communications

Clarity on channels, forms and frequency of communications is recommended.

- How are instructions issued by the OMC board to the agent? Who is the point of communication for the agent and the OMC?
- What is the agent's communications policy? What are its response arrangements, including call-backs, email replies, postal replies, newsletters, and communications with residents?
- Does the agent have a 24-hour emergency response line? Is it a live service, or recorded? Is it run by the agent, or a third-party call answering service? The telephone number for emergency call outs should be contained in the LOE.
- What tools for communications with members are provided?
- Does the OMC have a full contact list for the agent?
- What are the timeframes for communications?
- How will the agent communicate with the OMC's auditor, where applicable, and other professionals engaged by the OMC, e.g. the OMC's solicitors?
- Is the agent's website easy to navigate with useful information?
- Are websites for individual estates available/ hosted by the agent?



Financial Management Considerations

Consideration may be given to the role of the agent in financial management of an OMC.

- How often are management accounts produced, and how will they be delivered to the board of directors, or the finance committee to the board?
- What software does the agent use to prepare and maintain financial records for OMCs to which it provides services?
- Does the agent have a separate finance department or function?
- Is financial administration and payroll undertaken by the agent in-house, or by a third-party?
- How are supplier invoices processed and approved? This is a critical provision and should not be deviated from by either party. This procedure should be clearly addressed in the LOE and managed in a consistent manner. The OMC directors should consider who will oversee the implementation of this provision.
- Who, if any, of the agent's personnel are authorised signatories on the OMC bank account? This is a critical provision to ensure the safe management of OMC funds.
- Where online banking is operated by the OMC, consider whether a director of the OMC should be a transactions authoriser on the account.
- What are the spending authorisation limits on the OMC's bank account? OMC directors should consider how this provision will be implemented in practice.
- How does the agent show adherence to the Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012 (S.I. No. 199 of 2012)?
- How does the agent evidence compliance with anti-money laundering legislation?



Collection of Annual Charges

Cash collection is essential to plan and pay for estate services.

- What is the agent's debt collection policy for annual charges outstanding? How does the policy relate to the OMC's policy, and the covenants of the head lease for the estate?
- What role does the agent's staff member(s) attached to your estate have in the collection of annual charges, and dealing with debtors?
- What electronic operating systems are employed by the agent to facilitate payment of annual charges? The LOE between the OMC and the agent may be used to document timeframes for transfers of funds, or other non-routine financial transactions that may be undertaken by the agent on behalf of the OMC.



Administration/Company Secretarial Services

It is important that there is agreement on what administrative and company secretarial functions an agent is expected to perform.

- Will the agent hold the office of Company Secretary of the OMC?
- Will the agent perform company secretarial duties without holding the office of OMC Company Secretary?
- Who takes minutes of OMC board meetings?
- Will the agent be responsible for administration and any due diligence associated with the appointment of new directors?
- Will the agent's office act as the OMC's registered office?
- Where are the OMC's books and records to be stored?
- Are OMC files maintained on site at the estate?
- Will the agent provide off-site storage of OMC documents and files?
- Consider the IT security back up used to protect the OMC's records. Does the agent have a business interruption and disaster recovery plan?
- Seek a copy of the agent's privacy policy.
- Consider the agent's data protection arrangements.



Property Management

Consider the way in which operational or day-to-day services will be delivered.

- Does the agent sub-contract or delegate any of the services it is engaged to provide? How is this documented?
- Does the agent have a panel or list of approved contractors/suppliers to which it subcontracts?
- How are contractors chosen?
- Is there transparency around connections between the agent and contractors?
- How frequently are third-party service contracts reviewed? Does the agent have a documented review process?
- Consider the agent's capabilities in relation to tendering for the estate's block insurance, and the directors' and officers' insurance.
- Will the OMC solicitor and accountant or auditor be recommended by the agent, or chosen by the OMC directors? How often will this service be re-tendered?
- Does the company use formal inspection reports? How frequently are reports completed? Are they shared with the OMC board?
- What active measures does the agent take to achieve value for money for the OMC?
- How does the agent address underperformance by subcontractors or suppliers?
- Does the agent have staff with expertise in matters such as fire safety, health and safety, or insurance?
- How frequently and for how many hours will the agent's allocated staff be on site at the estate?
- How are agent's staff holiday leave arrangements managed?
- If the OMC has its own direct employees, how will the agent interact with these staff members? Will direct staff of the OMC report to the agent, or to the OMC board of directors?
- Will the agent provide samples of board papers, management agent reports, and the Annual Report required by section 17 of the MUD Act?



Self-Managed Estates

On occasion OMC directors may consider undertaking the management of the MUD directly without a property services provider, i.e. so-called "self-management" of the estate.

Directors may wish to consider the risks involved in this approach.

Considerations including the following may require attention:

- Qualifications and experience
- Time commitments
- Regulatory compliance, e.g. data protection, health and safety, anti-money laundering
- Liability and insurance
- Directors' duties under company law
- Taxation, e.g. PAYE
- Conflicts with directors' interests as OMC members



Appendix

Sample cover letter to invite tenders from prospective agents

To be produced on OMC business letterhead

[PROSPECTIVE AGENT'S CONTACT PARTICULARS]

[DATE]

Dear [ADDRESSEE],

Re: [OMC NAME]

[NAME AND ADDRESS OF MULTI-UNIT DEVELOPMENT]

The board of directors of [OMC NAME] is reviewing the property management services provided to the above estate. We wish to invite tenders for services.

Enclosed for information purposes are the following items:

- Description of the estate
- Outline of the nature and scope of services required
- Copy of the company's most recent financial statements for the period ended [DATE]

Considerations used to evaluate tenders will include value for money, and the quality of service proposed.

If you wish to participate in the tender process, please respond in writing to this request no later than [DATE] with your tender response.

Kind regards,

Yours sincerely,

[DIRECTOR'S NAME]

For and on behalf of [OMC NAME]



DISCLAIMER

This document is intended to provide practical guidance for owners' management companies ("OMCs") and directors of OMCs. The material relates to residential OMCs only.

The guidance provided in this document is non-statutory, and is general in nature. It is subject and secondary to the provisions of relevant law including but not limited to the Multi-Unit Developments Act 2011, the Property Services (Regulation) Act 2011, and the

Companies Act 2014. In the event of a conflict between the content of this guidance and legislation, the legislation prevails.

The content of this document does not amount to legal advice. The Housing Agency will not be liable for any loss (financial or otherwise, direct or indirect) arising from adoption or implementation of the guidance, or failure to adopt or implement the guidance. Legal or other professional advice might be necessary on individual circumstances.

This guidance is a live document and may be subject to change from time to time. Compliance with guidance in this document is not the responsibility of the author.

This material is available to re-use, provided the Re-Use of Public Sector Information (data.gov.ie/pages/re-useofpublicsectorinformation) requirements are fulfilled.



An Ghníomhaireacht
Tithíochta
The Housing Agency