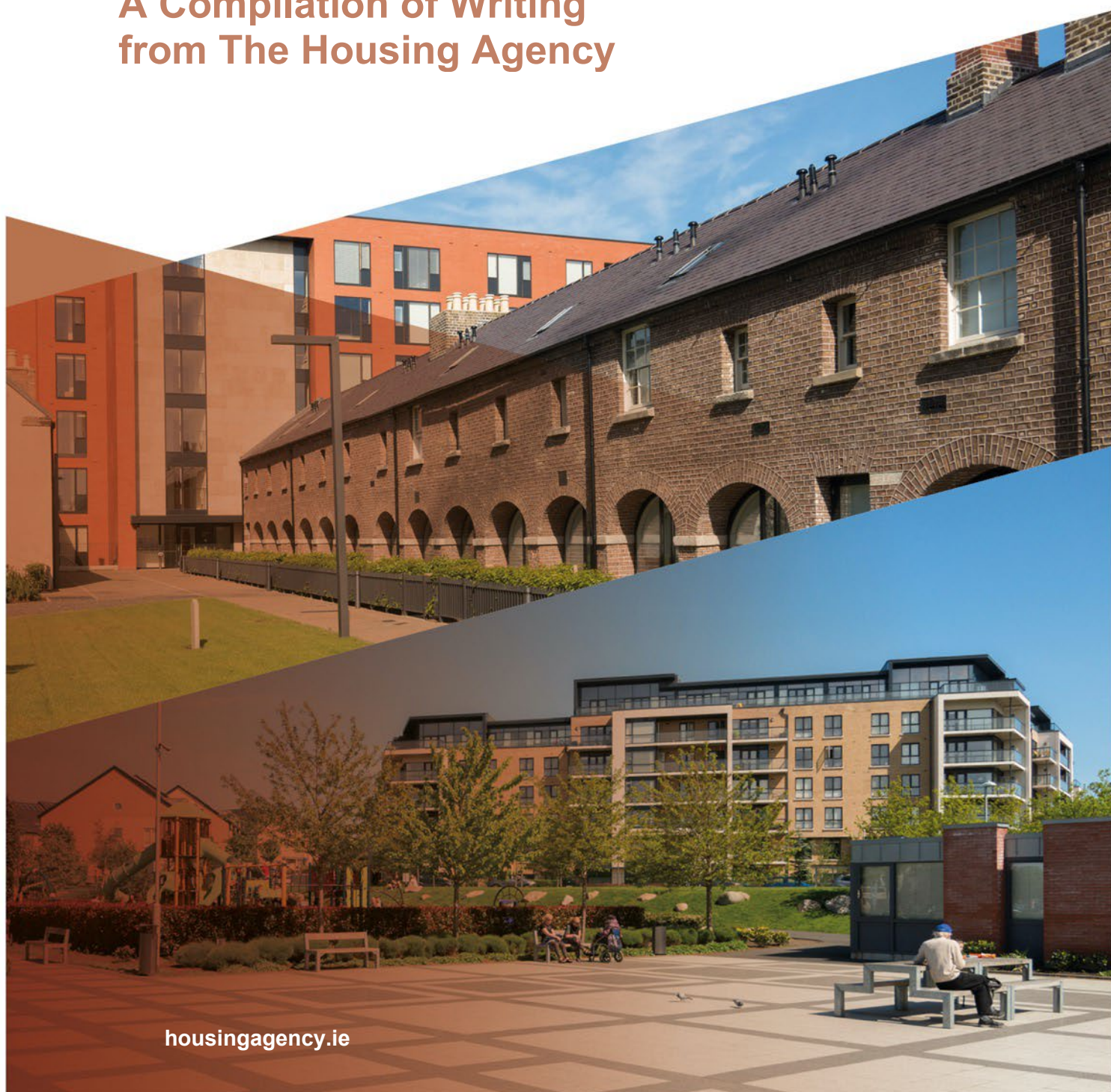




An Ghníomhaireacht
Tithíochta
The Housing Agency

Multi-Unit Developments & Owners' Management Companies

A Compilation of Writing
from The Housing Agency



housingagency.ie

Foreword

Ireland's population is increasing however our household sizes are getting smaller. We have an increasingly diverse and mobile population mix. There are housing policy trends towards compact urban growth.

These and other societal shifts mean that apartments and managed estates are playing an increasingly important role in meeting the country's housing needs.

The collective structures and shared services that support apartment living and managed estates may not be readily understood. This publication is a compilation of writing about multi-unit developments, and owners' management companies (OMCs). OMCs are responsible for the management of shared spaces and services in managed estates such as apartments.

The writing aims to explain the relationships, stakeholders, and systems that underpin an expanding component of Ireland's housing stock. It is hoped that the reader will gain a better understanding of the elements necessary to achieve successful apartment living.

The writing in this compilation first appeared in professional and industry journals, housing publications, and national media. For reasons of editorial clarity minor modifications have been made to original text.

Thanks are due to the publications and editors for their cooperation in the preparation of this compilation, and for their permission to reproduce the writing.

The articles from *Governance and Compliance*, and *Law Society Gazette* were co-authored by Mr. Nicholas Kissen, and Ms. Patricia Murphy respectively.

Disclaimer

All reasonable precautions have been taken to verify the accuracy of the content. Content was correct at the time of first publication. Information provided is general in nature and should not be considered to amount to legal advice, and no reliance should be placed on it. The Housing Agency cannot be held responsible for actions, or failures to act on foot of the information provided. Professional legal advice might be necessary on individual circumstances.

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ON THE UP AND UP.....

What the Growth in Apartment Numbers Means for Local Authorities

Local Authority Times, Vol. 24. No.2, Autumn 2022

Publisher: Institute of Public Administration

Apartments form an increasing proportion of Ireland's housing stock. Data from the Central Statistics Office record that:

- Grants of planning for apartments increased by almost 300 per cent over the period 2010 to 2020. In contrast, the increase in permissions for houses was just under 60 per cent;
- 2019 was the first year in which more apartments than houses were granted planning permission;
- Quarter 4 of 2020 was the first ever quarter ever when more apartments than houses were completed;
- In 2021 25 per cent of all completions in the country were apartments, the

highest proportion since CSO records began;

- In the first quarter of 2022 apartments made up 70 per cent of completions in Dublin and 31 per cent of completions nationally.

What does the growth in apartments permissions and completions mean for local councils?

Linking Planning and Management Phases

The 2018 Guidelines for Planning Authorities *Sustainable Urban Housing: Design Standards for New Apartments*, link the planning phase of apartments to

their long-term management. Included in the application and approval processes for apartments are:

- A building lifecycle report, and an assessment of long-term running and maintenance costs for the estate
- A demonstration of measures considered to manage and reduce costs for the benefit of residents
- Appropriate conditions that require compliance with the Multi-Unit Developments (MUD) Act 2011
- An owners' management company (OMC) and an appropriate sinking fund.

Buying or Leasing Homes in MUDs

Matters arising for local authorities acquiring or leasing homes in MUDs include:

1. *Financial health of the OMC*

- Yearly financial statements should be available online from the Companies Registration Office (CRO). Cash, debtors, the value of the sinking fund, and disclosure notes to the accounts might be reviewed.
- An annual report prepared for existing homeowners is required under Section 17 of the Multi-Unit Developments (MUD) Act 2011.

2. *Governing documents*

- The head lease may require a tenant under a sublease to become a member of the OMC. Such a requirement may have implications for a local authority, depending on its status under the leasing arrangement.
- House Rules, established in the manner set out in Section 23 of the MUD Act, bind a local authority owner and its tenants.

- A contract between an OMC and a management agent is required by the Property Services (Regulation) Act 2011. The Property Services Regulatory Authority has published a template contract, explaining the mandatory terms, and those that may be varied by the parties. Service levels under this contract can have a bearing on the standard of maintenance and upkeep of estate common areas available to residents, including local authority tenants.

3. *Building/construction safety*

- Meeting the minimum standards for rental accommodation
- Conformance with the building control legislative framework
- Fire safety compliance.

A local authority will typically consider many of these matters in its financial, legal, and construction technical due diligence processes. Sources of guidance on the issues are noted at the end of this article.

Taking in Charge

When construction of a MUD such as an apartment scheme is completed, most of the common areas will be transferred to the OMC by the developer. Under the scheme's planning conditions, some parts of the development, e.g., main roads and associated services, may be destined to transfer to the local authority. The Office of the Planning Regulator has published *A Guide to Taking in Charge of Completed Residential Developments*, which includes guidance about taking in charge in MUDs.

Planning and other changes

- In July, the Sustainable Energy Authority of Ireland launched supports

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for the installation of electric vehicle charging infrastructure in existing MUDs.

- The Draft Planning and Development Act 2000 (Exempted Development) (No. 3) Regulations, 2022 include exemptions from planning permission for solar panels installed on apartment buildings. At the time of writing, a public consultation on the regulations was underway.
- *A Waste Action Plan for a Circular Economy* flags new planning and tenancy laws for infrastructure in apartments to assist segregation of food waste, e.g., use of brown bins.
- Actions 25.10 to 25.12 of *Housing for All*, the Government's action plan for housing, set out reform in relation to collection of annual service charges, sinking funds, and dispute resolution. These proposals are reflected in

actions of *Justice Plan 2022* issued by the Department of Justice.

Resources for local authorities and stakeholders

The Housing Agency's website, housing.ie, and YouTube channel, youtube.com/c/HousingAgencyIE host resources for MUDs and OMCs. *Owners' Management Companies – A Concise Guide for Directors* is governance guidance prepared by the Housing Agency in collaboration with Chartered Accountants Ireland.



Housing Management Planning

Key Issues for Local Authorities

Council Review, Issue 69, Summer 2022

With apartments and a mixed tenure of houses, apartments and duplexes having formed an expanding part of Ireland's housing stock, David Rouse, Multi-Unit Developments (MUD) Advisor with The Housing Agency, discusses key considerations from planning through to long-term management for local authorities.

In firstly looking at the numbers, a quarter of all housing completions in 2021 were apartments according to the CSO.

This represented the highest proportion since the CSO's New Dwellings Completions series began in 2011. In 2020, for the first time more apartments than houses were granted planning permission, a trend that was set to continue in 2021.

Building Lifecycle Reports

Chapter 6.11- 6.14 of the *2018 Guidelines for Planning Authorities Sustainable Urban Housing: Design Standards for New Apartments* deals with the assessment of planning applications and the operation and management of apartments, other than Build-To-Rent schemes.

All apartment applications must include a building lifecycle report which contains an assessment of long-term running and maintenance costs for the estate.

Proposers must demonstrate what measures have been considered to manage and reduce costs for the benefit of residents. Appropriate conditions that require compliance with the Multi-Unit Developments Act 2011 must be

attached. An owners' management company (OMC) must be established, and an appropriate sinking fund created.

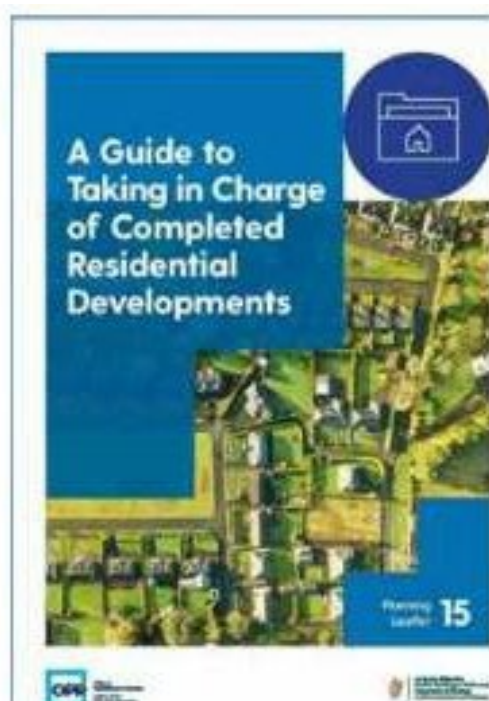
Table 1- Summary of Frequent Issues

Local Authority Discipline/ Section	Frequent Issues
Planning & Development	Lifecycle Reports
Engineering/ Roads/Water/ Legal	Taking in Charge Transfer of Common Areas
Finance	Adequacy of <ul style="list-style-type: none"> • Service Changes • Sinking Funds
Housing/ Community	Tenant Liaison Leasing arrangements Rental minimum standards MUD Act House Rules

Transfer of Common Areas

Most of the estate common areas will be owned by the OMC, under the process of transfer of common areas (TOCA) from the developer.

However, it may be that elements of the estate are to be subject to taking in charge (TIC). For example, planning may have specified that main roads and associated services shall transfer to the local authority.



Acquisition Considerations

For councils acquiring stock in MUDs, it may be prudent to consider the following:

- Legal due diligence, beginning with the head lease, the OMC constitution, and the contract with the management agent.
- Financial due diligence: review the OMC's last three years' accounts.
- Building safety, in terms of construction, fire, etc.
- Post-acquisition engagement with the OMC, about estate and tenant management.

Leasing Agreements

The head or main lease governs relationships between the OMC and owners. In very large estates there may be hundreds of owners, made up of owner-occupiers and landlords, including social, public, and investors, both personal and institutional/ commercial.

The awareness by local authorities of covenants of head leases is important. For example, a head lease may contain a covenant requiring a long lease tenant (typically a letting greater than perhaps five or ten years) to become a member of the OMC.

Implications of such a clause for a local authority, whether as tenant (e.g., of an institutional owner) or lessor should be considered.

Regulatory Horizon

In terms of the future, some changes on the horizon include:

- Measures to ensure residents have infrastructure to support food waste segregation.
- Actions in 'Housing for All' to reform OMCs, in relation to service charge collection, sinking fund provision, and dispute resolution.

Recent Resources

Information and resources are available on www.housingagency.ie while the Housing Agency's YouTube channel features recordings of training webinars, which address topics such as the MUD Act, Company Law for OMCs, and Sinking Funds.

Apartments, design, and operating costs

Architecture Ireland, Edition 321, January/February 2022

No.		Timeline	Lead
25.10	Regulate under subsection 17 of section 18 of the Multi-unit Developments Act 2011 ('MUD Act') to ensure that OMCs are financially sustainable	Q4 2022	DoJ
25.11	Regulate under subsection 9 of section 19 of the MUD Act to ensure that OMCs provide for expenditure of a non-recurring nature (i.e. sinking fund expenditure)	Q4 2022	DoJ
25.12	Examine the introduction of a non-statutory dispute resolution process	Q4 2022	DoJ
25.13	Examine measures to accelerate conveyancing as part of the sale and land transfer process	Q4 2022	DoJ

Oscar Wilde famously defined cynics as people knowing the price of everything and the value of nothing. What about realists? Consider the realities of the costs, expressed in annual management charges, of shared spaces and services in developments such as apartments. Are there design aspects of these spaces and services that could be reconsidered and perhaps optimised, in light of how they influence management and maintenance costs?

What, if any, are the trade-offs between design and long-term operational costs? Where lies the balance? Are there design elements that later in the building life cycle call for supplemental action and associated expenditure? Could this be anticipated and avoided?

These brief observations are not a polemic against aesthetics, nor are they a manifesto for cost-cutting, or so-called value engineering. They are intended to prompt reflection on how design in apartments may affect on-going costs for

the end users, be they owner-occupants or landlords.

Cost drivers

An accountant knows that activity and complexity in a process or structure are drivers of cost. The same principle may apply to the day-to-day management of an apartment block. More, or more complex, management and maintenance activities, influenced or activated by design, can build into annual management charges potentially avoidable cost components. Such costs may include service providers' incremental costs; unanticipated building elements; opportunity costs of property management's agent's time. Practical examples may be helpful, as shown in the table provided.

Building lifecycle reports / MUD Act compliance

The extent to which these matters may be considered at design stage is likely to be influenced by a myriad of factors, not

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least of which includes site constraints, planning conditions, construction costs, and client budgets. Paragraphs 11 to 14 of Chapter 6 of *Sustainable Urban Housing Design Standards for New Apartments* (2018) consider the assessment of planning applications and the on-going operation and management of apartments other than Build-to-Rent schemes, i.e. developments with multiple or fractional ownership.

Planning applications must include a building life cycle report, containing an assessment of long-term running and maintenance costs. Proposers must demonstrate what measures have been considered effectively to manage and reduce costs for the benefit of residents. Planning authorities are required to attach appropriate conditions that require compliance with the Multi-Unit Developments Act 2011. Establishment of an owners' management company and creation of an appropriate sinking fund – by reference to on-going maintenance and renewal of the development's facilities – are required.

Regulatory horizon

Recent flagged changes on the horizon for the regulation of apartment construction and long-term operational sustainability include:

- Chapter 7 of *A Waste Action Plan for a Circular Economy*, which anticipates regulatory changes in planning and tenancy laws required to ensure apartment dwellers are provided with infrastructure to support food waste segregation.
- Introduction of new classes of solar panel planning exemptions relating to their use in apartments.

- Actions in Chapter 5.5.5 of *Housing for All* to reform owners' management companies, the bodies responsible for the control and management of common spaces and services in multi-unit developments.
- Expansion by the SEAI of the EV home charger grant to include shared parking in apartments.

Information and resources in relation to apartment design, and the operation of owners' management companies, are available in the publications section of The Housing Agency's website www.housing.ie/publications. Examples include *Quality Apartments and Urban Housing* and *Urban Housing and Owners' Management Companies: A Concise Guide for Directors*.

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Design aspect	Additional long-term costs arising	Design considerations
Waste and recycling stores: <ul style="list-style-type: none">• Location in underground car parks.• Positioning at a distance from access ramps, gates, or other access points.• Lacking passive surveillance by residents.	<ul style="list-style-type: none">• Retrofitting CCTV to identify and discourage unauthorised disposal, and contamination of recycling or food waste.• Labour hours of waste management contractors.• Access, cleansing, and safety systems.	<ul style="list-style-type: none">• Siting of facilities at surface level.• Access control.• Passive surveillance from adjacent residences.
Positioning of residential and retail/commercial parking facilities.	<ul style="list-style-type: none">• Parking regulation/clamping• Installation of measures such as parking posts, bollards, double yellow lines, signage.	<ul style="list-style-type: none">• Designated loading locations and times for retail.• Zonal parking.
Landscape features, e.g. decorative water installations, dependent on electrical power, etc.	<ul style="list-style-type: none">• On-going maintenance.• Sustainability of energy and water consumption.	<ul style="list-style-type: none">• Renewable energy sources.• Elimination.
Purposing and access for shared gardens, green spaces.	Balancing and supervising residents' rights, and potentially contested uses.	<ul style="list-style-type: none">• Appropriate layouts and means of access.• Noise attenuation/mitigation measures.

The MUD Act at 10

Surveyors Journal, Volume 11, Issue 2, Summer 2021

A DECADE HAS PASSED SINCE THE MULTI-UNIT DEVELOPMENTS ACT 2011 CAME INTO FORCE, SO IT IS TIMELY TO LOOK BACK AT SOME OF THE CHANGES IN THE MUDs SECTOR.

Much has changed across the multi-unit developments (MUDs) landscape in the 10 years since the Multi-Unit Developments Act 2011 came into force. A reflection on changes in the period from April 2011 reveals legal and regulatory advances, insightful contributions to thinking, and new entrants to the sector. An awareness of the increasing complexity of the sector can help to sustain MUD communities into the future.

Using the MUD Act

Before discussing sectoral changes in the last 10 years, several of the provisions of the MUD Act that are directly relevant to owners are worth considering. Measures introduced transparency around the finances of owners' management companies (OMCs). For example, the annual report prepared in line with section 17 of the Act should present a clear view of the position of the OMC and the estate. Owners can expect to be kept up to date about key financial information and plans for future maintenance programmes.

Elsewhere in this issue, Noel Larkin highlights the importance of sinking funds (page 30). The Act delivered clarity in relation to voting rights of OMC members, certainty about developers' obligations on the transfer of common areas to the OMC, and equity in the apportionment of service charges. Section 23(11), allowing an OMC to recover from owners costs associated with breaches of house rules, can be an effective curb on disturbances. The extent

to which provisions of the Act for mediation and dispute resolution are used is difficult to measure; reports of Circuit Court decisions are scarce.

Contributions to Thinking

The report 'Owners' Management Companies: Sustainable apartment living for Ireland' authored in 2019 by SCSi member Paul Mooney, was commissioned by The Housing Agency and Clúid Housing. It compared the Irish model of apartment management to structures and law in four other countries. The report made recommendations for regulatory change in Ireland. Last October's 'Review of the Administration of Civil Justice 2020', a report to the Minister for Justice, contained proposals for reform of the wider legal system, potentially with implications for the MUDs sector. For example, the report considers the place of online dispute resolution in the system of civil justice.

The SCSi's 2018 report 'Sinking Funds: Meeting the Challenge', and its recent paper 'Review of Multi-Unit Development legislation- Policy position' set out proposals for reform.

Over the last 10 years, studies and dissertations written in furtherance of academic qualifications have delivered useful insights on the operation of the MUD Act. Outside of academic writing, *Owners' Management Company: Law and Best Practice* by Aisling Keenan is a

practical reference book for the sector. Lessons can be drawn from this literature, and from the lived experience. Simple as it may seem, the key distinction between the role of the OMC, as principal, and the job of the property services provider as management agent, is a message worthy of continuing communication by all stakeholders. In February 2021, The Housing Agency published 'Engaging a Property Management Agent: Guidance for Owners' Management Companies'. This information is intended to assist OMCs with the important process of selecting a management agent.

Clarity concerning the source of rights and responsibilities can pre-empt disputes or smooth their early resolution. Readers will be familiar with three primary source categories:

- Contracts, principally the estate head lease, or the contract between the OMC and the agent.
- Governance, for example the constitution of the OMC; and,
- Legislation – the MUD Act, the Companies Act 2014, and the Property Services (Regulation) Act 2011.

Corporate legal framework

Coming into force in 2015, the Companies Act 2014 consolidated multiple pieces of legislation amending the Companies Act 1963. The 2014 Act and its subsequent amendments form the company law framework under which all companies, including OMCs, operate. The codification of directors' fiduciary duties, previously established in common law, into section 228 of the Companies Act, provides a frame reference for OMC directors in relation to the obligations of their role.

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 facilitated a switch to virtual annual general meetings and voting for OMCs. Anecdotal evidence suggests that this has led to increased attendances at AGMs by homeowners. These innovations are due to be made permanent under proposed changes to company law. May 2021 saw The Housing Agency and Chartered Accountants Ireland publish 'Owners' Management Companies: A Concise Guide for Directors'. The guide focuses on 10 corporate governance considerations for OMC directors. Its purpose is to help directors to navigate important matters such as directors' duties, financial management, outsourcing, and OMC performance.

MUDs and planning

The 'Sustainable Urban Housing: Design Standards for New Apartments' were issued in March 2018 and amended in December 2020. Under paragraphs 6.11-6.14, assessments by local authorities of apartment planning applications must consider the long-term running costs and eventual manner of compliance of proposals with the MUD Act. Applications must include a building lifecycle report, to include an assessment of long-term running and maintenance costs as they would apply on a per residential unit basis. In addition, applications must demonstrate what measures have been specifically considered effectively to manage and reduce costs for the benefit of residents.

When granting permission, planning authorities are advised to attach appropriate conditions that require compliance with the MUD Act, establishment of an OMC, and establishment and ongoing maintenance of a sinking fund.

Service providers and consumer protections

April 2022 will mark a decade since the Property Services Regulatory Authority (PSRA) was established. Readers will be familiar with the supports and oversight established under the system of regulation and licensing. Professional competence requirements and client money safeguards apply. At the end of 2020 new minimum standards, accompanied by a code of practice, were added to the framework of consumer protection.

Sector new entrants

In the last decade new participants – commercial institutional landlords like REITs and similar funds – have entered the MUD sector. Approved housing bodies (AHBs) now build or buy homes, many of which are managed as MUDs. Local authorities play an increasingly prominent role in MUDs through arrangements including Part V acquisition, leasing, and construction. These changes can bring complexity and experience to the sector, and to the management of individual estates.

Technology, climate action and sustainability

Aside from the switch to virtual meetings brought about by the pandemic, technological advances employing web-based portals and applications offer estate management and reporting in real time. New approaches to environmental sustainability, de-carbonisation, and renewables continue to be driven by legislative change and residents'

expectations. New MUDs can plan outcomes at design stage by way of energy-saving components. Limited financial resources, and spatial or title constraints in existing MUDs may pose challenges to retrofitting, for example installing electrical vehicle charging infrastructure in common areas.

Further change

Other changes in the landscape in the decade since the arrival of the MUD Act include the Building Control (Amendment) Regulations 2014, guidance in relation to fire safety in MUDs, and the establishment by the Minister for Housing, Local Government and Heritage of an independent working group to examine the issue of defective housing.

The MUDs sector is no exception to Heraclitus's proposition that change is the only constant in life.

Owners' management companies and sustainable apartment living

Cornerstone, May 2021

In the mid-2010s, through experience and Census information, Clúid and The Housing Agency recognised that the number of people in Ireland living in apartments is likely over the coming years to continue to increase. Flowing from this recognition was the identification of the role of owners' management companies (OMCs) in the success of apartment living. OMCs own and control facilities and common areas, such as gardens, carparks, and internal spaces including stairs, corridors, and lifts, for the benefit of all residents. Managing them well improves daily life for everyone.

After the introduction of the Multi-Unit Developments Act in 2011, Simon Brooke recognised the need to consider its impact. At his instigation, a report was commissioned by The Housing Agency and Clúid Housing to profile, examine and assess the performance of OMCs. Recommendations were sought for any necessary changes that could improve their operation.

Census data around the time the report was commissioned indicated an 80/20 ratio of apartments dwellers as between renters and owner occupiers. It revealed that a significant proportion of apartment renters live in social or publicly supported apartments. This could be in homes owned by housing associations, or where private rentals are aided by housing support payments. The report was clear that OMCs affect the quality of life and attractiveness of apartment living for

renters, private owners, investors and non-profit bodies managing them.

The report identified: OMC 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.

To build on this and other issues identified in the findings and recommendations and recognising that OMC directors are drawn from across society, in late 2019 and early 2020 The Housing Agency hosted a series of regional outreach events for stakeholders. Sessions were aimed at OMC members, residents, local authority staff, AHB personnel, and OMC directors. Following pilot outreach events hosted in Galway City and the North East, sessions were held in Cork, four Dublin venues, Carlow, and Limerick. In all, approximately 250 people attended.

Covid-19 restrictions introduced in March 2020 prevented further events scheduled for Sligo, Athlone, Maynooth, Drogheda, and Dublin city centre. These meetings were moved online to webinar format.

Taking a lead from Simon's innovative and collaborative approach to life's endeavours, The Housing Agency collaborated with professional and state

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bodies in the sector to switch online further engagement.

Positive responses from the Society of Chartered Surveyors Ireland, the RIAI, Engineers Ireland, the Law Society of Ireland, IPAV, the Chartered Governance Institute Irish branch, and the Construction Bar Association led to live webinars across 2020. Presenters addressed a diverse range of relevant topics benefiting all stakeholders in the sector – consumers, practitioners, and others.

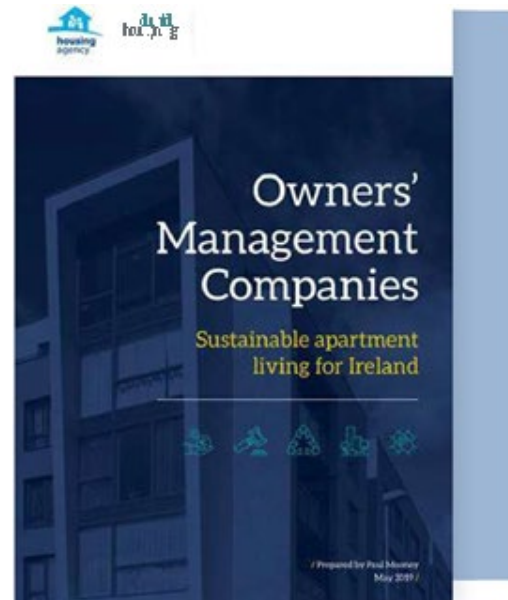
The Residential Tenancies Board collaborated in a webinar focused on topics of relevance to landlords and tenants of homes in managed estates. With the National Building Control Office, The Housing Agency delivered an online session updating on building control legislation.

Finally, just before Christmas, a panel of speakers from Australia, Canada, Ireland, New Zealand, the USA and the UK engaged on *Apartment/Condo Regulation, Management & Future Trends: International Perspectives*.

Over the period from March 2020 a cumulative audience of almost 4,600 attended and participated in the live webinars. This order of magnitude increase in sector engagement, spurred by challenges of Covid-19, would undoubtedly meet with Simon's approval.

Together with other resources for the apartment and OMC sector, recordings of all webinars are available on The Housing Agency's website and YouTube channel. Plans for additional OMC stakeholder guidance and training across 2021 are well advanced. The Housing Agency's

website www.housingagency.ie will carry details.



Not only did Simon demonstrate a thorough understanding of the issues facing the multi-unit development sector, he also had the foresight and energy to champion much-needed research. A true gentleman and a pleasure to have worked with.

- Bryan Maher, Director, Apartment Owners' Network

Simon saw the need for rights for homeowners in multi-unit developments. He saw the benefits of mixed-tenure societies, the creation of communities, and the destigmatisation of social housing. All of these found commonality in the apartment sector in Ireland. Simon's identification of a need for a paper to detail the complexities of the MUD sector, research overseas, best practice and recommendations for improvements reflected his understanding of housing and its importance to society.

- Paul Mooney, report author

MUD Act: bringing homeowners together for the common good

Business Post, 11 April 2021

April 1, 2021, marked ten years since most sections of the Multi-Unit Developments Act 2011 came into force. The MUD Act, as it has become known, was intended to “amend the law relating to the ownership and management of the common areas of multi-unit developments and to facilitate the fair, efficient and effective management of bodies responsible for the management of such common areas, and to provide for related matters”.

Owners' management companies

A multi-unit development, or a MUD, is a property such as an apartment block, usually containing not fewer than five homes, in which amenities, facilities and services are shared. Owners' management companies, or OMCs, are responsible for the ownership and management of estate common areas, for example entrance halls, stairways, gardens, and car parks. The property owners in the development are the members of the OMC.

Services including maintenance, insurance, waste collection and security are arranged collectively through the OMC. If managed effectively, this shared approach can save homeowners time and money.

Residents benefit from community amenities, for example well-tended gardens and landscaping. Locations with increased residential densities are often served by good public transport links, such as the Luas and Dart in Dublin. A further benefit of density is proximity to centres of

diverse employment opportunities, and cultural and social activities.

Disputes

Apartment living, closer to neighbours than is the case in conventional semi-detached or terraced housing, can, however, bring tensions or disputes. Gaps between residents' expectations and their lived experience can arise. For example, the upkeep of common areas may not meet standards expected. House rules to protect residents' quiet enjoyment of their homes may go unenforced. The pandemic may have magnified this experience for some.

With this in mind, we asked the question, are OMCs managed fairly, efficiently and effectively, as the MUD Act intends? The answer is: it depends.

MUD Act

The MUD Act brought clarity to formerly contentious topics such as voting rights. In most developments, each property (as opposed to each owner) carries an entitlement to one vote. Developers are obliged to complete common areas and transfer them to the OMC within a specified timeframe.

The act established a fair and transparent financial framework for OMCs. It clarified the way in which homeowners fund the costs of shared services. It introduced a statutory obligation for owners to pay management charges.

Under the act, an OMC must issue an annual report to its members. Plans for

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future expenditure, statements of the OMC's current financial position and details of estate insurance cover and fire safety measures are among the matters that must be contained in the report.

Dispute resolution under the MUD Act involves mediation, or legal action in the Circuit Court. Reports of Circuit Court decisions are seldom carried in the media or in law reports.

This makes it difficult to evaluate the extent of enforcement of parts of the act, such as whether there have been many court orders directing the transfer of common areas from developers to OMCs.

Company law

OMCs must comply with the legal framework that regulates all companies – the Companies Act 2014. It is not realistic that individual homeowners would be familiar with the detail of this large and complex body of corporate regulations. However, it is essential that directors of OMCs acquaint themselves with their duties under company law.

Guidance is available from sources such as the Companies Registration Office (CRO) and the Office of the Director of Corporate Enforcement (ODCE). When appropriate, the advice of experienced professionals should be sought. Directors who are familiar with their duties under company law will be well placed to know when to seek professional advice.

Intending purchasers of homes in MUDs should ask their property and legal advisers about how MUDs function. Do purchasers know they will automatically become a member of an OMC? Can they afford the annual management fee and sinking fund contribution? Which residents

will act as directors of the OMC, roles which in most cases are unpaid and voluntary?

Key documents

Owners, and particularly OMC directors, should familiarise themselves with the governing documents relating to the estate. Three important documents are the OMC constitution, the head lease and the contract between the OMC and the property management agent.

The constitution deals with the internal governance of the company, for example, its powers, membership conditions and the conduct of meetings. The importance of the head lease becomes apparent when a dispute arises about whether a wall or a roof is a common area owned and controlled by the OMC, or private property owned by the homeowner. Also documented in the lease are matters such as the apportionment between individual properties of the total cost of running the estate.

An OMC usually employs a management agent to undertake the day-to-day running of the development. A contract, or letter of engagement, governing this relationship is a legal requirement. The contract documents the services, fees and other arrangements with the agent, who by law must be licensed.

Finances

One of the functions of the agent is to advise the OMC about the calculation of the budget for services and maintenance for the development. Advice on establishing a building investment fund, or sinking fund, is equally important. Following agreement of budgets at a members' meeting, invoices for annual

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management charges are issued to owners.

Securing owners' payment of charges is a key function of the OMC, guided by the agent and the company's legal adviser. Full and timely payment benefits the entire community because services can be planned and provided with certainty. Pursuing unpaid fees consumes time and money better spent on services and property upkeep.

Homeowners in MUDs might be wary of false economies and short-term thinking in relation to annual charges. Artificially low charges may mean that sinking funds are not being built up. In the long term, this is to the detriment of all owners, because big projects such as lift replacements or building redecoration may be difficult to finance.

In it together

OMCs have been described as the glue binding together owners' property interests in MUDs. A cast of people needs to work together to achieve fair, efficient, and effective management. Responsibilities lie with residents, landlords, OMC directors, management agents, local authorities, regulators, housing charities, and legal and construction professionals.

Depending on the nature of a dispute involving or affecting an OMC, the Residential Tenancies Board (RTB), Property Services Regulatory Authority (PSRA), or ODCE may have a regulatory or enforcement role.

Information on the MUD Act and other relevant law is readily available. The Housing Agency, the Citizens Information Board and other state organisations publish accessible guidance materials.

Professional bodies such as the Society of Chartered Surveyors Ireland (SCSI) prepare materials for their members, and for consumers.

Owners' Management Companies

The Property Professional, Quarter 1 2021

Owners' management companies ("OMCs") are a feature of apartment developments and high-density housing. During 2020, in collaboration with IPAV and other professional bodies, The Housing Agency hosted a series of webinars dealing with issues affecting OMCs and apartments.

David Rouse of The Housing Agency delivers an update on some of the topics covered in the webinars, and what changes might be coming down the track for OMCs. Challenges posed by COVID-19 and resources available are considered.

Unusual Companies

It is estimated that there are between 7,000 and 9,000 OMCs in Ireland. An OMC can be thought of as a hybrid company. In most cases it is not-for-profit. It is a property asset manager, however it shares characteristics with a residents' association, because the company directors are almost always volunteers, usually residents or owners in the estate.

"Volunteer" company directors trying to keep up to date with changes in laws and regulations rely on guidance from professional advisors. The regulatory framework within which OMCs operate involves company law, land law, fire safety regulations, health and safety rules, insurance, and employment law.

Independent advice from professionals, including the property management agent, is key to a well-run OMC. This then makes for a successful estate, and a sustainable community. The Housing Agency has

recently published "Engaging a Property Management Agent: Guidance for Owners' Management Companies". Prepared for stakeholders including OMC directors, the material consists of questions and points for consideration when selecting an agent.

Company Law

OMC directors are bound by the same duties in law as directors who are paid for their services. Section 228 of the Companies Act 2014 sets out a director's fiduciary duties. Directors must avoid conflicts of interest and must act in the interests of the company and its members. Where OMC directors are connected with the estate developer, or the management agent there is the potential for conflicts of interest. The consequences of a breach of duties, including the potential for personal liability for a company's debts, should be understood by OMC directors.

Company Law Compliance

The Office of the Director of Corporate Enforcement (ODCE) is responsible for encouraging compliance by companies (including OMCs), directors or other officers with the Companies Acts. Breaches of company law in relation to OMCs where the ODCE can assist include:

- Holding of AGMs
- Financial Statements
- Directors' and secretaries' duties
- Company Registers, e.g., Register of Members.

New law, the Companies (Miscellaneous Provisions) (COVID-19) Act 2020, facilitates online AGMs and electronic

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voting irrespective of the rules in a company's constitution. These provisions apply until at least June 2021.

Management Company Finances

The Multi-Unit Developments Act 2011 was 10 years old on 24 January 2021. Despite the obligations imposed by the legislation on developers, owners, and OMCs, research evidence indicates that the sector continues to face financial challenges. A common problem for OMCs is under-funded or non-existent building maintenance or sinking funds. Poor service charge collection rates, inadequate budgets, or a combination of both factors are seen to cause difficulties.

In 2019 The Housing Agency and Clúid Housing published 'Owners' Management Companies, Sustainable apartment living for Ireland'. The independently authored report compared Irish apartment management structures with those of four other countries and made recommendations for reform here. One such recommendation was mandatory training for directors. Measures aimed at improving the financial health of OMCs were put forward. These included cost-effective methods for dispute resolution and debt recovery, under a regulatory authority, moving away from the courts system. Proposals for reform of the wider legal system are contained in Review of the Administration of Civil Justice 2020, a report to the Minister for Justice published in October of last year.

Minimum Standards for Agents

From 30 November 2020 new Minimum Standards apply to property services providers including property management agents in multi-unit developments. Regulations particular to OMCs include

that agents, or their employees providing services to an OMC, are prohibited from appointment as a director of that OMC. An exception is where the agent owns a property in the development. There are standards in relation to the collection and transfer of service charges and sinking fund contributions. An agent shall not make the provision of services to an OMC conditional on the OMC being represented by any particular legal advisor.

Defective Properties

An independent Working Group has been announced by the Minister for Housing, Local Government and Heritage, Darragh O'Brien T.D. Mr. Seamus Neely, former Chief Executive of Donegal County Council, has been appointed to chair the group.

COVID-19

The current public health situation has presented challenges for OMCs. Operations, facilities management, finances, and cash flows have been affected. In collaboration with IPAV and the SCSi, The Housing Agency produced 'Guidance for Multi-Unit Developments and Residential Owners' Management Companies during Coronavirus (COVID-19)'. The document is intended to provide practical guidance for OMCs, directors, management agents, and residents.

In June 2020 the Office of the Director of Corporate Enforcement ("ODCE") issued a detailed statement 'COVID-19 and the insolvency-related functions of the ODCE'. The statement is considered to contain reassurance that directors acting honestly and responsibly in good faith will not without just cause suffer sanctions for a company's inability to pay debts as they fall due.

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While there is now a pathway to recovery from the pandemic, OMC directors, working with their management agent, should continue to engage with financial scenario planning. Cashflow forecasting, prioritisation of spending, and cost contingency reviews are standard approaches.

Local Government and multi-unit developments in Ireland

lgiu.org/local-government-and-multi-unit-developments-in-ireland, 27 January 2021

24 January 2021 marked the tenth anniversary of the signing into law of the Multi-Unit Developments Act 2011, or “MUD Act”, as it quickly became known. The majority of the Act’s provisions came into force on 1 April 2011. In the intervening 10 years, the profile of the multi-unit development (MUD) or apartment sector has changed significantly. Local government personnel, elected and executive, continue to contend with the complexities of a form of housing still more novel than normal to Ireland. What are some of the significant changes in the sector of interest to local government?

Complexity

Commercial and institutional landlords have entered the market. Local authorities’ involvement has expanded through Part V, direct acquisition, and leasing. Now statutorily regulated, Approved Housing Bodies purchase or build apartment stock.

Under the Strategic Housing Developments process apartment blocks are a feature of schemes intended to deliver homes at scale. Build-to-Rent is soon to emerge in our largest urban centres.

A mix of owner-occupiers, private renters, and social or public renters presents dynamics, and politics. Tensions must be managed. In conventional MUDs, the owners’ management company (OMC) plays a pivotal role in balancing residents’ rights and obligations. OMC directors are

usually unpaid. Most frequently, they are drawn from the wider body of owners. Participation by all stakeholders- residents and landlords (private and public/social)- makes for a successful estate.

Housing bodies and local authorities nominating OMC directors offer tenure expertise. Confidence around tenant suitability can harmonise tensions, perceived or real. The processes of setting budgets, tendering for services, or pricing insurance, benefit from the commerciality of landlords willing to serve as OMC directors. They can engender sound financial management. Owner-occupier directors are perhaps more personally invested in an estate. Certainly, they possess the lived experience of a scheme’s successes and shortcomings.

The advent of the institutional landlord, be that a Real Estate Investment Trust (REIT), international investment fund, or other corporate provider, can bring a level of professionalism to apartment management. The mobile international cohort of a workforce may generate accommodation needs differing from those of residents with stronger or deeper ties to a locality. A variety of tenures, an expanded range of on-site managed services, such as laundry and entertainment, and diversity in home configurations are innovations expected through the Build-to-Rent model. Cost rental schemes including apartment stock are under construction. The way in which

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new schemes and configurations function in the post-pandemic landscape will be instructive.

Construction defects from the Celtic Tiger period may also have a lasting impact on sustainability and perceptions of apartment living. An independent Working Group on defective housing was recently announced appointed by the Minister for Housing, Local Government and Heritage, to be chaired by Mr. Seamus Neely, former Chief Executive of Donegal County Council.

shrinking household sizes and urban sprawl. Planning, housing, transport, and finance are perhaps the principal units within local government invested in the sector's success.

Funding and governance

In multi-owner arrangements management fees are the lifeblood of the OMC. Failure in timely payment of appropriate service charges is perhaps the chief drag on the success of many estates. OMCs would do well to consider that stock owned by local authorities and AHBs delivers uniquely reliable payers. A corollary is that local authorities might reflect on the extent to which fees are set at a rate sufficient to meet future big-ticket expenses. Is the OMC providing for the cost of lift and plant replacement, roof repairs, and scheme redecoration?

To ensure future upkeep, a funded building investment fund (or sinking fund) is essential from the very start of the life of the estate. Council planning departments will be aware that the current Design Standards for New Apartments – Guidelines for Planning Authorities seek to connect cost information available at the design, construction, and operational stages of the building lifecycle.

MUDs are residential developments of increasing complexity. They can help to level conflicting pressures such as

Building blocks

Accounting and Business, April 2020



With owners' management companies becoming a feature of the housing market, **David Rouse** provides an update on the regulatory issues of interest to accountants.

Perhaps you or your clients have investment properties in apartment developments. You may have been asked to serve as an owners' management company (OMC) director. Your practice may provide professional services to OMCs.

As apartment numbers in Ireland increase, it can be expected that OMCs will become more commonplace. Residential density targets in the National Planning Framework require apartments as a proportion of the country's housing stock to treble, from 13% in 2019 to 39% by 2030.

Familiarity with the wider regulatory regime, together with an understanding of how areas of relevant law interact, can help to enhance the level of service delivered by professionals to the OMC sector. Current estimates indicate that there are around 8,000 such companies in operation in Ireland.

An OMC is a somewhat strange creature on the Irish corporate landscape. It is a hybrid of a property asset manager, a residents' association, and a not-for-profit company. Boards are usually made up of unpaid directors, drawn from and elected by the residents of the apartment development or housing estate. The OMC owns the estate's common areas and

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arranges shared services such as block insurance, repairs and maintenance, and waste management.

Company directors endeavouring to keep up to date with regulatory developments rely on sound advice from key professionals. This is particularly true of OMC directors without a business background. Independent guidance from the estate property services provider (or management agent), the OMC's solicitor, accountant or auditor is essential to the orderly running of the company.

Company law, property law, fire safety regulations, insurance obligations, health and safety rules, and employment law are just some components of the regulatory framework within which OMCs operate.

Legal requirements

Since the coming into force of Companies Act 2014 on 1 June 2015, the financial statements of most OMCs do not require an audit. This is because the majority are incorporated as companies limited by guarantee (CLG). However, the rigour of the audit process can provide a level of assurance to OMC members – the estate property owners – in relation to spending on the shared spaces and services affecting the value of their properties. Under sections 334 and 1218 of the Companies Act, a member of a CLG may in effect demand that the company's accounts be subject to an audit.

An auditor's letter to management is a valuable source of information and assistance for volunteer directors in their stewardship of the OMC's affairs. Consideration by an external party of financial trends, in particular progress with the recovery of service charge debts, and the accumulation of a sinking fund for

future non-recurring expenditure, may help the directors with financial management. Unpaid directors have the same duties in law as directors who are paid for their services, and they should ensure they are familiar with their obligations under the Companies Act. Section 228 of the act sets out a director's fiduciary duties. Of particular relevance are the requirements to avoid conflicts of interest, and to act in the interests of the company and its members as a whole.

Conflicts of interest can arise where persons connected with the estate developer, or the management agent sit on the board of the OMC. The consequences of a breach of duties, including the potential for personal liability for a company's debts, should be understood by directors. Parts of the Multi-Unit Developments Act 2011, often referred to as the MUD Act, overlap with Companies Act 2014 provisions: for example, both require the holding of an annual general meeting.

Under section 8(3) of the MUD Act, homeowners must provide the OMC with particulars including their name and address. In effect, this replicates the register of members required by section 169 of the Companies Act 2014.

The MUD Act governs voting rights within an OMC, while the Companies Act contains detailed provisions dealing with the conduct of meetings at which voting is undertaken.

An annual report that documents matters including OMC expenditure and budgets is required under section 17 of the MUD Act. This report mirrors aspects of a company's statutory financial statements.

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The Office of the Director of Corporate Enforcement is responsible for encouraging compliance by companies (including OMCs), directors or other officers with the Companies Acts, identifying suspected misconduct, and taking enforcement action in cases of serious breaches. Legislation that proposes a new Corporate Enforcement Authority is currently in draft format.

Financial challenges

Evidence indicates that many OMCs face grave financial challenges. Research in 2018 by the Society of Chartered Surveyors Ireland points to a considerable gap in funding for the long term. In many OMCs, building maintenance or sinking funds are wholly inadequate or non-existent. This can be due to poor service charge collection rates, a failure to budget correctly for future capital commitments or a combination of both factors.

A recent report, *Owners' Management Companies, Sustainable apartment living for Ireland*, commissioned jointly by the Housing Agency and Clúid Housing, draws comparisons with equivalent apartment management structures in four other countries and sets out recommendations for reform of the Irish regime. Removal of the audit exemption for OMCs is recommended, as is mandatory training for directors. A further recommendation is the prescription of a standard format for OMC financial statements.

The report also sets out measures aimed at improving the financial health of OMCs – for example, the exclusion of dispute resolution and debt recovery from the courts system – in favour of more cost-effective methods under the aegis of a regulatory authority.

Round the Houses

Governance and Compliance, February 2020

A recent report commissioned by the Housing Agency makes recommendations in relation to corporate governance, return filings, directors, and other matters concerning owners' management companies in Ireland.

In the UK and Ireland respectively, corporate compliance by flat resident management companies (RMCs), and owners' management companies (OMCs) has proved problematic.

Anecdotally, RMCs are the type of company most likely to be struck off by the UK Companies House. Media reports in Ireland reveal troubling instances of corporate non-compliance by OMCs. The purpose of this article is to consider corporate compliance matters for RMCs and OMCs, and their directors. The authors reflect on experiences in England and Wales, and Ireland, and future potential reforms to improve rates of compliance.

Company Law: Ireland

In Ireland, most OMCs are not-for-profit companies limited by guarantee (CLGs). By virtue of their corporate personality, they are subject to the provisions of the Companies Act 2014. As secure property title and the maintenance of property values depend on the good standing of the OMC, the importance of governance and corporate compliance cannot be understated.

Of the sections of the Companies Act relevant to OMCs, perhaps the most frequently invoked in practice are those governing company membership, directors' duties, and the particular provisions dealing with CLGs.

Under section 169 of the 2014 Act, a company must keep a register of its members. The register becomes relevant where, for example, OMC members seek to coalesce to elect directors, pass budget items, or set new house rules. An up-to-date members' register is essential, and responsibility for its upkeep rests with the directors.

OMC directors, albeit typically unpaid, are bound by the same duties as are directors of other bodies corporate. Directors' duties are set out in Part 5 of the Companies Act. Acting in the best interests of the company, exercising independent judgement, and disclosing conflicts of interests, are duties key to contributing to a well-functioning OMC board.

Companies Act 2014 provides an audit exemption for CLGs. However, under sections 334 and 1218 any one member may seek an audit. The work of an auditor may deliver comfort and value to OMC members, in terms of assurance and transparency around the expenditure of members' funds.

Company Law: England and Wales

The position in England and Wales is that companies owning and/or managing freehold properties and comprising flat owners may be limited either by share capital or guarantee. There is no stipulation that they must be one or the other, with the

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exception of Right to Manage (RTM) companies, being a concept introduced by the Commonhold and Leasehold Reform Act 2002. The requirement is that these must be companies limited by guarantee and have a form of Articles of Association or Model Articles whose content is prescribed by legislation, and covers such matters as membership, calling of meetings and voting rights.

The main piece of legislation dealing with company law in England and Wales is the lengthy Companies Act 2006. This Act does not have any particular provisions devoted specifically to property management companies. It does however set out the general duties of a director which are sevenfold. Chiming with the Irish position, duties include promoting the success of the company, exercising independent judgment and reasonable care, skill, and diligence.

A wide range of administrative responsibilities falls on directors, although they may be less burdensome for small companies as the 2006 Act provides for less formal paperwork to be filed by such companies. For instance, they may be exempt from audit, may not have to deliver a directors' report to Companies House and may not have to deliver a full set of company accounts for filing.

A confirmation statement (previously called an annual return) must be filed with Companies House. If the company does not do so it runs the risk of being struck off the register. This can cause problems for flats being sold, as well as the company and its directors facing possible prosecution. It is easy for people with busy lives to overlook such requirements but equally many who volunteer their time to manage the company do a good job and

experience minimal if any compliance problems.

In both jurisdictions the problems with attracting people to be directors may be alleviated to some extent by the availability of directors' and officers' liability insurance, the costs of which should be recoverable under the service charge provisions of any well-drawn lease.

Multi-Unit Developments Act 2011

In Ireland, the Multi-Unit Developments (MUD) Act 2011 introduced a limited new layer of governance for OMCs. The MUD Act deals mainly with the transfer of estate common areas, setting of service charges and related matters for managed estates. Running to 34 sections, the legislation was enacted during the depths of the great recession, a period which saw many apartments in Ireland lose more than half their value. The 2011 Act was intended to balance the rights and responsibilities of living in a residential estate with having fractional ownership of common areas.

Membership of an OMC

Under section 8 of the MUD Act OMC membership transfers by operation of law. On the sale of a unit, formal stock transfer forms are not required, however, in keeping with Companies Act 2014 a register of members must be maintained and updated. Voting is on the basis of one unit, one vote. In mixed use developments, i.e. estates with residential and commercial units, under section 2 of the MUD Act voting rights must be "apportioned in a manner which is fair and equitable".

The MUD Act imposes additional obligations on OMC directors, over and

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above their responsibilities in company law, including new duties in relation to financial governance, annual reporting to members, and the holding of an AGM. Section 30 of the MUD Act provides an abridged company restoration procedure under the Companies Act. Restoration without High Court approval is available for six years from the date of OMC strike off, in contrast to the usual 12-month period for other companies.

The Volunteer director

In UK and Irish law, there is no concept of a “volunteer” director. As noted earlier, an OMC or RMC director owes to the company and its members the same duties as does a director of any other type of company. A 2016 survey of RMC directors in England and Wales by Leasehold Advisory Service and Brady Solicitors found that many leaseholders and directors lacked a clear understanding of their rights and obligations. The study considered the role of the RMC director and, while noting it was a time-consuming position, it was seen to be a rewarding experience.

For houses converted into flats, or for blocks of flats in the UK, it is not unusual for the owners of the company that in turn owns the freehold to be the individuals who own the long leases of the flats. With such an arrangement it is frequently set out in the leases that the flat owner must be a member of the freehold-owning company and that the flat owner's/member's share is not transferable except to a succeeding owner. In the main, there will be one share per flat with service charges raised under the lease terms so that the fabric, structure and exterior of the building and its common parts can be maintained.

The central problem in the UK with leaseholder owned and controlled companies which own the freehold is a financial one. The company is usually under-capitalised because its only property is the freehold reversion of the building. This is often worth very little, particularly so if the leases are or have been extended to 999 years with an income from low or nominal ground rents, if such rents are charged at all.

An application to restore the company to the UK register can be made if the company was struck off the register and dissolved by the Registrar of Companies within the last six years.

New Report

There is no separate register in Ireland identifying OMCs, but it is estimated that there are about 8,000 in the country. Irish Companies Registration Office records indicate that incorporations are running at an average rate of three new OMCs each week over the last five years.

A recent independent report, Owners' Management Companies – Sustainable Apartment Living for Ireland, jointly commissioned by the Housing Agency and Clúid Housing, considers the position of OMCs, and reviews the limited effectiveness of the MUD Act.

Recommendations of interest to the compliance professional will be those for separate regulation of OMCs, beyond existing company law enforcement mechanisms. The role of the volunteer director is considered, and mandatory training is proposed. Removal of the audit exemption in the case of OMCs is also recommended. The report advocates the standardisation of financial accounts to a format prescribed for OMCs.

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In the UK, the Companies House on-line beta service enables access to information about registered companies, but there is no separate register identifying RMCs. The UK Law Commission made recommendations for reform of the law and, in the sphere of freehold purchase and RTM consultation papers were issued. The latter provisionally proposed that training for RTM company directors should be encouraged and well publicised, but not mandatory.

OMC and RMC directors may be unversed with the complexities of legislation. Familiarity with the wider legal framework within which these companies operate can help corporate compliance professionals in both jurisdictions to guide their clients through unfamiliar territory.

A review of “Owners’ Management Companies- Sustainable Apartment Living for Ireland” In the Context of the Achievement of Project Ireland 2040 Compact Growth Targets.

Pleanáil, 2019/2020

In this article by David Rouse, he highlights the role of sustainable apartment development and other forms of higher density housing in the achievement of climate actions objectives and compact growth targets. Project Ireland 2040 targets 40% of new homes within the built footprint of existing towns, cities and urban areas. The target for Dublin and the four alternative cities of Cork, Galway, Limerick and Waterford of achieving 50% compact growth in the delivery of new homes is challenging. It is argued that the successful implementation of the targets will require a granular understanding of how to achieve sustainable higher density housing. The review of *“Owners’ Management Companies- Sustainable Apartment Living for Ireland”* is a pathfinder document in understanding the barriers and challenges to achieving higher density housing and sustainable apartment living.

The apartment home is a significant housing typology in sustainable land use. It will in urban locations and in well-connected suburban locations be the principal objectively desirable home if compact growth targets are to be successfully realized. The Review is not only relevant to the housing sector. The Report and Recommendations have a broader relevance in putting in place the building blocks to achieve sustainable land use and transport patterns mandated by

national policy on climate action and compact growth.

The implementation of sustainable land use and transportation are two of the principal areas to be addressed in achieving climate action. The practical matters outlined in the delivery and sustainable operation of higher density housing document the degree of attitudinal change that is required.

To begin to meet this challenge is to first understand the granular issues in the delivery of sustainable higher density housing including sustainable apartment development. An informed start in this process is acknowledging the barriers and supporting the recommendations in *“Owners’ Management Companies- Sustainable Apartment Living for Ireland”*.

It is envisaged that the publication of this article will support a more inclusive audience of built environment professions, central and local government officials and finance and fiscal policy decision makers.

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A recent independent report titled *“Owners’ Management Companies- Sustainable apartment living for Ireland”* considers issues affecting managed estates and Owners’ Management Companies. The report was jointly commissioned by the Housing Agency and Clúid Housing. The Housing Agency works with the Department of Housing, Planning and Local Government, Local Authorities, and Approved Housing Bodies (AHB) in the delivery of housing and housing services. Clúid is the country’s largest AHB, managing a stock of just over 7,000 homes. What are the implications of the report for the achievement of compact growth?

The National Planning Framework: Ireland 2040 (NPF) has a policy objective of increased residential densities in urban areas. Population growth is to be planned in accordance with several National Policy Objectives (NPO). These target brownfield and infill development within the existing built footprint of the country’s urban settlements. The targets are to be reflected in the Core Strategies of City and County Development Plans. At least 50% of new homes are to be built within the

existing footprint of our five cities and their suburbs, and 30% of new homes elsewhere within the existing urban footprint.¹

The overall target of 40% of new homes nationally within the footprint of existing settlements is likely to mean changes for the status quo, in terms of the construction, design and management of higher density living. This article considers whether the framework of existing policies for sustainable higher density living supports NPF targets. A key objective of the NPF is compact growth and sustainable mobility. The targets in the NPF for the location of new homes translate to the proportion of apartments in Ireland trebling, from 13% in 2019 to 39% by 2030.²

Chapter 2.6 of the NPF notes that the fastest-growing parts of Ireland are currently at the edges of and outside our cities and towns clear evidence of urban sprawl. Increasing car dependence, a higher carbon footprint than the EU average, and a hollowing out of urban centres, are some of the immediate negative consequences identified with these patterns of development. A consensus has emerged that compact and sustainable growth in our urban areas is required to deliver a reversal of these trends.

Climate Action Plan

Policies of the Climate Action Plan (CAP) focus on sustainable planning and development in the context of climate change. As the CAP points out, higher density residential development tends to comprise smaller homes, requiring less energy to heat. Multi-unit developments,

¹ National Planning Objectives 3a, 3b, 3c

² Climate Action Plan Chapter 6.3.3

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made up of apartments, duplexes, or other innovative configurations of residential accommodation, are expected to form part of the answer to the challenges set by the NPF and CAP. This being the case, does the current regulatory framework for managing multi-unit developments support national planning objectives in relation to higher density stock? Are stated policy aims realisable within the parameters of existing legislation governing the built environment – the shared spaces and services – integral to apartment living?

Apartment Planning Guidelines

Planning professionals will be familiar with requirements of the March 2018 Design Standards for New Apartments – Guidelines for Planning Authorities concerning provision for the long-term operation and management of apartment developments. The Guidelines carried an initial recognition and linking of wider apartment design policy with day to day operation and management.

Chapter 6.13 of the Guidelines requires that planning applications for apartment developments must include a Building Lifecycle Report (“BLR”). A BLR is key to proper management of development into the future. It is intended to include an assessment of the long-term running and maintenance costs of an estate. The BLR should document measures considered by the developer to manage effectively, and reduce, running costs for the benefit of residents.

The Guidelines also require the consideration of the manner of compliance of a development with the Multi-Unit Developments Act 2011, including the establishment of an estate Owners' Management Companies (“OMC”). OMCs are the not-for-profit companies made up

of all the owners in an estate. They own and control the estate common areas. A board of directors of an OMC, elected by and from the owners, arranges services- insurance, maintenance, waste, and recycling, etc.- to the estate's shared spaces.

While the BLR can, in theory, prove a valuable starting point in understanding the long-term costs of an estate, those BLRs submitted since March 2018 through the Strategic Housing Developments process vary in the depth and breadth of their detail. Some reports itemise estimates of build costs and deliver a schedule setting out the life expectancy of building components. Several BLRs have included service charge budgets. In the view of this author, however, the focus of such budgets appears to have been on a maximum acceptable or marketable annual service charge per home, rather than a robust reflection of the likely running costs and sinking fund contribution required. This is significant because realistic operational and management budgets are required to underpin the long-term sustainability and resilience of higher density housing.

Owners' Management Companies- Sustainable Apartment Living for Ireland

The NPF recognises that achieving compact urban growth will require a focus on the development and management of an attractive built environment. This requires consideration of the liveability of both public and private realms. Uniquely, much of the private realm in higher density accommodation, such as internal common areas, gardens, parking, etc., is shared between residents. The OMC owns and is responsible for these shared spaces. In

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this way, the OMC may be seen as almost a second layer of local or municipal government, invested with the responsibility for the quality of the built environment delivered to the wider community.

Matters receiving attention in the Owners' Management Companies- Sustainable apartment living for Ireland report include the inadequacy of annual service charges, failure to provide for building maintenance (sinking) funds, and the perennial problem of mounting service charge debts. The report examines international best practice in apartment management and regulation. Ontario and New South Wales are among the jurisdictions considered. The report signals future demand for higher density housing in the context of the NPF and the CAP. Recommendations for regulatory reform are put forward.

Report Recommendations

Considering the focus on the quality of the built environment, of particular interest to planners will be the recommendations for a regulatory and inspection regime for managed estates. Additionally, the report recommends measures for improvements in insurance cover and sinking fund provision for apartment blocks. A dispute resolution process designed to avoid costly visits to the Courts is recommended.

Training for OMC directors, legal changes to enhance lease covenant enforcement, and improvements in communication with OMC members, are among other measures included.

As the report title suggests, the principal aim of the recommendations is to support OMCs as the glue binding together the shared services, property interests and spaces of an estate- the factors seen as critical to supporting sustainable higher density housing.

Readers will be familiar with the legacy construction and financial issues facing many OMCs. High-profile cases such as Priory Hall and Longboat Quay have featured in press coverage in recent years.³ Shortcomings in OMC corporate governance have been widely reported. The largest of the country's OMCs operate multi-million-euro budgets. Untrained, and for the most part unpaid directors are assigned the stewardship of these companies and their finances. It is estimated that there are 7,000 to 8,000 OMCs in the country. The challenges observed in apartment block management are viewed as a drag on acceptance of the higher living density which is an important housing typology required to meet policies included in the NPF.

The NPF discusses building resilience in our housing stock, meaning lifetime adaptable homes that over time can accommodate the changing needs of a household. It recognises that if urban sprawl is to be curtailed, apartments will need to become a more prevalent form of housing. The OMC report's recommendations seek to lay foundations for resilient, healthier higher density managed estates into the future.

The report is relevant in the context of planning and delivering a housing mix and

³ Four Celtic Tiger developments that had fire and safety issues, Sarah Burns, The Irish Times, 24 January 2018.

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built environment suitable for an ageing population. The provision of lower maintenance housing options, suited to that cohort of urban residents reaching a point in their lives when they may be considering a move from a large and expensive to maintain homes, is acknowledged.

Attitudinal Change

Fostering attitudinal change in Ireland to compact housing calls for improvements in the long-term management of this growing component of the country's housing infrastructure. Owners' Management Companies- Sustainable apartment living for Ireland seeks to bring to bear international best practice in the management of Irish apartments and multi-unit developments.

When considered in a wider national planning setting, the recommendations of the report in the context of the NPF and CAP objectives represent a joined-up approach. They seek to bridge the gap between the successful operation and governance of higher density accommodation and the housing and planning policies of moving towards compact growth, and away from urban sprawl.

Muddy waters

Law Society Gazette, November 2019

Apartments, owners' management companies, and how they interact with the law is an area that has been fraught with difficulties. Patricia Murphy and David Rouse deliver a timely review of the lay of the land.

Apartment developments and managed estates form an expanding part of Ireland's stock of residential real estate. In 2016, there were approximately 205,000 occupied apartments in the country. With the recovery in residential construction, the number of planning applications for apartments is rising. Compact urban growth and increased residential densities are key planks of Government policy, in the context of a growing population and decarbonisation.

At a Glance

- The *MUD Act* was intended to be a reforming piece of legislation, to deliver improved protection and dispute resolution
- Practitioners should be cognisant of the framework in which OMCs operate, in particular the interactions between the *MUD Act* and the *Companies Act*
- With the expansion in the number of apartments and managed developments throughout the country, further maturing of the law affecting the sector may be expected

Feel like going home

The *Multi-Unit Developments (MUD) Act 2011* introduced a limited statutory regime for the governance of owners' management companies (OMCs). The *MUD Act* deals with the transfer of estate common areas, setting of service charges, and related matters for managed estates. Running to 34 sections, it was formulated

to accommodate the unique challenges, rights and responsibilities that come with home ownership in a MUD.

The act enables apartment owners to take control of common areas and the management of a development, for the benefit of all residents, through the vehicle of the OMC. The OMC, usually a body corporate, looks after shared services, such as cleaning, lighting, landscaping, waste management and insurance. Each unit owner, upon closing their sale, automatically becomes a member of the OMC.

The act primarily covers four key areas:

- Conditions and obligations relating to the compulsory transfer of the common areas from the developer to the OMC,
- Obligations of the developer upon completion of the development stage,
- New remedial mechanisms for dealing with disputes, and
- New rules, rights, and obligations of OMCs in relation to directorships and voting rights; reporting and information; the calculation, apportionment, and recovery of service charges; the provision of a sinking fund; and other related matters.

Under section 3, where units have not yet been sold, a developer may not transfer an interest in a residential unit unless:

- The OMC has been established by the developer at the developer's expense,

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- Ownership of the common areas has been transferred to the OMC,
- Certification from an appropriately qualified person has been delivered confirming the MUD has been constructed in compliance with the Fire Safety Certificate,
- A contract has been entered into between the OMC and the developer outlining the obligations of each party, and
- An independent legal representative has been appointed (at the developer's expense) to advise the OMC.

Key to the highway

Under section 4, developers were required to transfer ownership of the common areas in existing MUDs to the OMC within six months of the commencement of that section – that is, by 30 September 2011. Accordingly, the common area ownership in all then-existing, partially and substantially sold developments should, by now, have been transferred. In practice, this transfer has often not occurred. Developer insolvency aside, delays can be attributed to the absence of effective sanction. The Conveyancing Committee of the Law Society advised in a practice note in June 2013 that the failure to transfer common areas in a pre-2011 development does not constitute a 'blot' on the title at the date of the certificate of title.

Where a development is unfinished, a transfer of the common areas does not relieve the developer of its obligations to complete. Of course, given the financial climate of recent years, many instances arose where MUDs were left unfinished. Attempts have been made to utilise the provisions of the *MUD Act* to compel liquidators to complete unfinished developments. However, in the recent

case of *Re Lance Homes Ltd*, the High Court (Baker J) held that the *MUD Act* did not, of itself, impose an obligation on a liquidator to take positive steps to carry out works of construction and development. The court further held that the obligations to complete a development in accordance with planning permission and under the building regulations are enforceable as a matter of statute by virtue of section 24 of the *MUD Act*; however, like any action in specific performance, it may be one that is enforceable only as a claim in damages, and may not give rise to mandatory orders being made.

My home is in the delta

On the sale of a residential unit in a MUD, membership of the OMC transfers to a purchaser automatically. The *MUD Act* waives requirements in relation to formal stock transfer forms and director approvals of transfers; however, a register of members must be kept.

One vote of equal value is assigned to each unit. Provision is also made for voting rights in mixed use developments – that is, estates with residential and commercial units. The governance of mixed-use schemes complies with the act where there is a "fair and equitable apportionment of the costs and expenses", and where voting rights are "apportioned in a manner which is fair and equitable".

While the act offers stronger arrangements, terms, and greater rights and protections for homeowners in MUDs, it also imposes additional obligations on directors of OMCs, over and above their responsibilities in company law. Requirements are introduced in relation to the holding of AGMs, and the determination and agreement of budgets, service charges, and sinking funds.

You shook me

The act stipulates that every member of an OMC must pay service charges. The developer is deemed to be the owner of a unit the sale of which has not completed from when the first unit of a sale was closed. This means that the developer is responsible for service charges for unsold units. Service charges may not be used to defray expenses that are properly the responsibility of the builder or developer, unless authorised by 75% of the OMC's members.

All MUDs must establish a building investment or 'sinking fund' to pay for refurbishment, improvement, or maintenance of a non-recurring nature. The act states that the annual contribution to the sinking fund is to be €200 per unit, or such sum as is agreed at a general meeting of owners. In theory, this allows for the varying financial needs of developments of differing sizes and specifications. However, the advisory nature of the provision can mean a failure to build up funding for future capital expenditure.

On a related point, attention is drawn to the March 2018 *Design Standards for New Apartments – Guidelines for Planning Authorities*. Chapter 6 requires that a 'building life-cycle' report, intended to inform sinking-fund calculations, be included with all apartment planning-permission applications.

Sinking-fund moneys must be held in a bank account, and funds due to the OMC may be recoverable as a simple contract debt.

No Escape from the Blues

The largest of the country's OMCs issue annual service charges in multi-millions of euros. Estimates are that there are about 8,000 OMCs in the country. CRO records indicate that, over the last five years, on average three new OMCs were registered each week.

A recent independent report, *Owners' Management Companies – Sustainable Apartment Living for Ireland*, jointly commissioned by the Housing Agency, and Clúid Housing, considers the position of OMCs and reviews the limited effectiveness of the *MUD Act*.

A recent independent report, *Owners' Management Companies – Sustainable Apartment Living for Ireland*, jointly commissioned by the Housing Agency, and Clúid Housing, considers the position of OMCs and reviews the limited effectiveness of the *MUD Act*. The inadequacy of service-charge levels, failure to provide for sinking funds, and the persistent problem of mounting debtors are some of the topics addressed.

The report makes recommendations for change across a range of relevant regulatory systems. Of interest to the legal profession will be the recommendations for regulation of OMCs, non-judicial mechanisms for the enforcement of lease covenants, and supports for OMC directors.

Regulation, over and above the usual CRO filings, and enforcement of company law by the ODCE, is recommended. Dispute resolution via a non-judicial tribunal is advocated, as are more effective avenues the recovery of service-charge debt, moving away from the courts. In this context, it is worth noting that OMC service-charge debt is 'excludable' from a

personal insolvency arrangement under the *Personal Insolvency Act 2012*.

Service-charge debt may be written off in a PIA only with the consent of the creditor – that is, the OMC.

Other recommendations of the report some include mandatory training for OMC directors, the standardisation of financial accounts to a format prescribed for OMCs, and enhanced insurance cover and reporting. Removal of the audit exemption is also recommended.

Can't be satisfied

An OMC has the right to alter, amend or add to the house rules of the development, so long as any changes are consistent, fair and reasonable, and have been circulated and agreed to at a general meeting of the owners. Although the *MUD Act* does not offer any specific sanctions for a breach of house rules, it does allow for the recovery by the OMC of the costs of remedying a breach.

Landlords who sublet their properties are obliged to ensure that their tenants adhere to the house rules. In *Kennedy v Sweepstakes Owners Management Company CLG*, the High Court (Barrett J) granted leave to a tenant to bring proceedings under section 24 of the *MUD Act* in connection with the implementation of house rules under section 23. Section 25 lists parties that may apply for, or appear and be heard at, an application under section 24. A tenant of a landlord (owner) in a MUD is not listed. In this case, the court exercised the discretion afforded under paragraph (f) of subsection 1 of section 25 to grant permission to “such other persons as the court sees fit”.

My dog can't bark

Exclusive jurisdiction for the *MUD Act* lies with the Circuit Court. Dispute resolution by means of mediation is encouraged in the first instance. Mediation is an important feature, as it may prove beneficial to the consumer in terms of time and costs saved. The abridged company restoration procedure under the *Companies Act 2014*, whereby application may be made to the Companies Office within 12 months of being struck off, is extended to a period of six years for OMCs.

The *MUD Act* was intended to be a reforming piece of legislation, to deliver improved protection and dispute resolution. It provides for the transfer of control and power from the developer to the OMC and the owners. OMC members benefit from fair and equal voting rights, as well as transparency around the calculation of annual service charges. Owners of apartments may influence the way in which their developments are being run. Developers may be pursued in court to hand over control and transfer the common areas to the OMC, if they have not already done so.

Got my mojo working

Having considered the principal provisions of the *MUD Act*, it should be remembered that while, in the main, OMCs are not-for-profit companies, by virtue of their corporate personality they are governed by the *Companies Act 2014*. In view of the centrality of the OMC to secure title and property values, the importance of good governance and corporate compliance cannot be understated.

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Of the sections of the *Companies Act* relevant to OMCs, perhaps the most frequently invoked in practice are those governing company membership, directors' duties, and the particular provisions dealing with companies limited by guarantee (CLGs).

Under section 169 of the *Companies Act*, a company must keep a register of its members – also a requirement of the *MUD Act*. The register becomes relevant where, for example, members seek to coalesce to elect directors, pass budget items, or fix new house rules. The necessity for an up-to-date register is obvious, and responsibility rests with the directors.

OMC directors, albeit usually unpaid, are bound by the same duties as attach to directors of other bodies corporate. Directors and advisors would do well to refresh themselves on the principal duties, enumerated in part 5 of the *Companies Act*, in particular the requirement to act in the best interests of the company. The exercise of independent judgement and the disclosure of conflicts of interests are key to the running of a successful OMC board.

As noted, most OMCs are CLGs. The *Companies Act* provides an audit exemption for CLGs. However, under sections 334 and 1218, any one member may require that an audit be carried out. In the context of assurance, transparency, and governance, an audit can afford comfort and value to members.

Rollin' and tumblin'

Practitioners should be cognisant of the framework in which OMCs operate, in particular the interactions between the *Multi- Unit Developments Alt 2011*, and *Companies Act 2014*.

The widening of the scope of the *Property Services (Regulation) Act 2011*, regulating property management agents, is delivering enhanced service standards in the sector. With the expansion in the number of apartment and managed developments throughout the country, including those owned by institutional landlords, further maturing of the law affecting the sector may be expected.

Look It Up

Cases:

- *Kennedy v Sweepstakes Owners Management Company CLG* [2019] IEHC 552
- *Re Lance Homes Ltd* [2018] IEHC 444

Legislation:

- *Companies Act 2014*
- *Multi-Unit Developments Act 2011*
- *Property Services (Regulation) Act 2011*

Business Heads, Community Hearts

Accountancy Ireland, October 2019



A new report proposes measures for the sustainability of owners' management companies and lays the foundation for a more structured approach to managing apartment complexes or managed estates.

In a professional audit or reporting capacity, Chartered Accountants may encounter owners' management companies (OMC). Readers living in an apartment complex or managed estate may even have been asked to serve as an OMC director.

OMCs, while in form incorporated typically as companies limited by guarantee (CLG), are in substance hybrid entities. They sit at a corporate crossroads between not-for-profit companies, property management businesses and residents' associations (see Figure 1).

Many readers will be familiar with the legacy construction and financial issues facing these companies. High-profile

cases such as Priory Hall and Longboat Quay, as well as other less prominent estates, have featured in the press in recent years while corporate governance failings in OMCs receive periodic attention in court reporting.

The country's largest OMCs have multi-million-euro annual service charge budgets. And yet, the stewardship of these companies is entrusted to unpaid, untrained directors (the term "volunteer director" is deliberately avoided, as in law, there is no such thing – a director is a director). There is as yet no firm handle on the number of OMCs in the country. However, it is estimated that the upper limit is likely to be about 8,000 companies.

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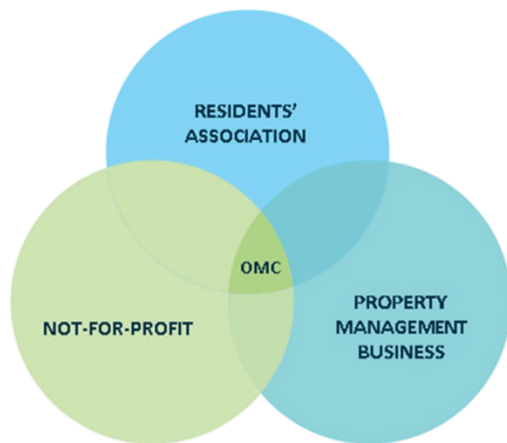


Figure 1: Owners' management companies

New report

A recent independent report titled *Owners' Management Companies – Sustainable apartment living for Ireland* considers issues that will be familiar to those with even a passing knowledge of managed estates and OMCs. The report was jointly commissioned by the Housing Agency and Clúid Housing. The Housing Agency works with the Department of Housing, Planning and Local Government, local authorities, and approved housing bodies (AHB) in the delivery of housing and housing services. Clúid is the State's largest AHB, managing just over 7,000 homes across the country.

The inadequacy of annual service charges, failure to provide for building maintenance (sinking) funds, and the persistent problem of mounting debtors are just some of the topics assessed. International best practice is examined, and Ontario and New South Wales are among the comparator jurisdictions featured. The future demand for high-density housing is signalled in the context of new Government policy, such as the National Planning Framework and the Climate Action Plan.

To audit or not to audit?

Recommendations for reform across a range of relevant regulatory systems are proposed. Of interest to the accountancy profession will be the recommendation for the removal of the audit exemption currently available to OMCs, most of which, as noted earlier, are incorporated as CLGs. Companies Act 2014 provides the audit exemption for CLGs. In this way, small not-for-profit companies without shareholders may benefit from a reduced financial and administrative burden. (It should be noted that under sections 334 and 1218 of the Companies Act, any one member of the CLG may in effect demand an audit.)

However, while OMCs are not-for-profit, they are responsible for multi-million-euro property assets in the form of estate common areas. Considering the centrality of OMCs to property values, good title, and quality of living spaces, the value of an audit to members in terms of assurance, transparency, and governance cannot be overstated.

Finance and governance

The creditworthiness of OMCs in the context of current underfunding is also considered. Regulation over and above corporate compliance enforced by the ODCE is recommended. Dispute resolution outside of the courts is advocated, as are more cost-effective avenues for service charge debt recovery. Personal insolvency practitioners will be aware that OMC service charge debt is an "excludable debt" under the Personal Insolvency Act 2012. Only with the consent of the creditor (i.e., the OMC) may management fee balances be reduced or written off in a Personal Insolvency Arrangement.

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The report's other recommendations include mandatory training for OMC directors, the standardisation of accounts to a format prescribed for OMCs, and enhanced insurance obligations.

Reform may be some way off. In the meantime, practitioners should be aware that the Institute's practice toolkit, Owners' Management Company PQAs, was updated in 2018. This replaces the 2011 version. As the Institute's product catalogue notes, and as may be recognised from the sectoral weaknesses highlighted in this commentary, although OMCs can be small in size, they may be higher-risk clients. Future regulation of the sector could mitigate a number of the risks identified.

Owners' Management Companies - Sustainable Apartment Living for Ireland is available at www.housingagency.ie.

Housing infrastructure: Compact growth and sustainable apartments

Engineers Journal, 8 October 2019

The conversation around increased urban residential densities in Ireland has in recent times turned to the theme of sustainable development, writes David Rouse.

Densification

Engineers Ireland's recent report 'The State of Ireland 2019 - A review of housing and infrastructure in Ireland' is an assessment of the country's housing stock. Among the topics considered are compact urban growth, and densification, including apartment construction. Practitioners will be familiar with the March 2018 Design Standards for New Apartments - Guidelines for Planning Authorities. Chapter 6.13 of the Guidelines requires that planning applications for apartment developments must include a building lifecycle report ('BLR').

Intended to include an assessment of long-term running and maintenance costs of an estate, a BLR is key to proper management of a development into the future.

The report should demonstrate the measures considered by the developer to manage effectively and reduce running costs for the benefit of residents. The guidelines also require the consideration of the manner of compliance of a development with the Multi-Unit Developments Act 2011, including the establishment of an estate owners' management company ('OMC').

Not-for-profit companies

OMCs are the not-for-profit companies made up of all the owners in an estate. They own and control the estate common areas.

Under the direction of a board elected by the owners, OMCs arrange services to the estate's shared spaces- maintenance and upkeep, block insurance, waste, recycling collection, and so on.

From media reports or professional engagements engineers will be familiar with the legacy construction and financial issues facing many OMCs. High-profile cases such as Priory Hall, Longboat Quay, as well as other less prominent estates have featured in press coverage in recent years. Corporate governance failings in OMCs receive periodic attention in court reporting.

The largest of the country's OMCs have multi-million-euro annual service charge budgets. Untrained, and for the most part unpaid directors are entrusted with the stewardship of these companies and their finances. (The term 'volunteer director' is consciously avoided, because there is no such thing in law- a director is a director.) It is estimated that there are 7,000 to 8,000 OMCs in the country.

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Sustainable apartment living for Ireland' considers issues familiar to those with even a passing knowledge of managed estates and OMCs.

The report was jointly commissioned by the Housing Agency, and Clúid Housing. The Housing Agency works with the Department of Housing, Planning and Local Government, Local Authorities, and Approved Housing Bodies (AHB) in the delivery of housing and housing services. Clúid is the country's largest AHB, managing a stock of just over 7,000 homes.

Issues receiving attention include the inadequacy of annual service charges, failure to provide for building maintenance (sinking) funds, and the persistent problem of mounting service charge debts.

The report examines international best practice in apartment management and regulation. New South Wales and Ontario are among the jurisdictions considered.

The future demand for high-density housing is signalled in the context of Government new policy, such as the National Planning Framework, and the Climate Action Plan. Recommendations for reform are put forward.

Recommendations

Of particular interest to the engineering profession will be the recommendations around fire safety. It is recommended that every five years an OMC commission a fire safety report. Such a report would identify necessary fire safety works, and recommend upgrades based on industry practice.

In order to assess compliance with fire safety procedures, and health and safety

obligations, periodic inspections of multi-unit developments are proposed. Evaluation of conformity with building regulations would come within an inspectorate's remit.

The report recommends measures for improvements in insurance cover and sinking fund provision for apartment blocks. Regulation of OMCs is recommended, together with dispute resolution processes designed to avoid costly visits to the courts.

Training for OMC directors, legal changes to enhance lease covenant enforcement, and improvements to communication with OMC members, are other measures put forward for the sector.

The overarching objective of the recommendations is to support OMCs as the glue binding the shared spaces, services, and interests key to sustainable high-density housing.

Change of mindset

The 'State of Ireland 2019' proposes that living in higher density communities, including apartments, will require a change of mindset. Reference is made to 2018 research for the Housing Agency into housing attitudes and aspirations.

Feedback in that research noted that apartment living was viewed as suitable for renting but held little appeal for long-term living and bringing up families.

Attitudinal change in Ireland to high-density living demands discernible improvements in the long-term management of this key component of our housing infrastructure.

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'Owners' Management Companies - Sustainable apartment living for Ireland' delivers recommendations to bring the governance of the management of Irish apartments in line with international best practice.

'Owners' Management Companies - Sustainable apartment living for Ireland' is available at

www.housingagency.ie/publications/owners-management-companies-sustainable-apartment-living-ireland.

Apartment Living

Eolas, May 2019



Compared with our European neighbours, Ireland has a relatively small proportion of our population living in apartments - about 7 per cent compared to the EU norm of closer to 40 per cent. However, in recent years, the number of apartments has increased considerably – between 2002 and 2016 there was an 85 per cent increase in apartment living, writes David Rouse.

Smaller household sizes, rising land costs, tax incentives, and reductions in affordability of traditional three-bedroom semi-detached houses are just some of the factors explaining the increase. Indications from the planning permissions system in the period since 2016 point towards continued expansion in apartment numbers.

With a more diverse and mobile population mix, trends reverting to city-centre living, and a continuing reduction in household sizes, apartment living is likely to play an increasingly important role in meeting Ireland's housing needs. Institutional landlords in the private residential sector are opening up new tenure streams. A small but expanding number of apartment

estates are now managed by specialist corporate providers.

Approved Housing Bodies continue to acquire homes in multi-unit developments. Yet tenants of non-institutional and “accidental” private landlords, together with conventional owner occupiers, still constitute the largest category of apartment residents.

Sustainability

The Central Statistics Office estimates a population increase of between 5.5 and 6.7 million people over the period to 2051¹. Recognising the projected rise, government policy as set out in publications such as the National Planning Framework, and Rebuilding Ireland, now focuses on increasing residential densities

in our towns and cities. Broad agreement has been reached on the unsustainability of urban sprawl. With these changes comes a need for more apartment blocks, to achieve greater efficiency in land use, better connectivity to public transport and a move away from reliance on the private car, and greener waste policies.

Shared amenities such as children's playgrounds, community facilities, and public realms of a high quality make for attractive apartment estates. Avoidance of over-concentrations of any one tenure type can contribute towards community development, resilience, and sustainability over time.

Funding and governance

Failure in on-time payment of properly budgeted management fees, also known as service charges, is one of the main limitations to the success of many estates. Management fees are the lifeblood of the owners' management company (OMC).

The OMC is the collective body through which shared services (e.g. bin collection and block insurance) and estate common areas are managed. It is essential that all property owners, owner-occupiers and landlords alike, pay their fees. Payment by instalment can help in cases of hardship. Another challenge for apartment estates is the extent to which the management fee is enough to cover future big-ticket expenses, such as lift replacement, roof repair, and major redecoration projects. To ensure future upkeep, a building investment fund (or sinking fund) needs to be set up from the very start of the life of the estate.

In apartment developments where there is a mix of owner-occupiers, private renters, and social or public tenants, the OMC

plays an essential role in managing residents' rights and obligations. Under the stewardship of volunteer directors drawn from the wider body of owners, in order to succeed the OMC requires participation from all stakeholders.

Board members from housing bodies offer tenure expertise, and confidence on tenant suitability. When it comes to setting budgets, tendering for services, or pricing insurance, the commercial knowledge of landlords who serve as OMC directors can promote sound financial management. Owner-occupier directors are fully invested in the estate and possess lived experience of its successes and shortcomings.

Employment of a good property management agent by a competent OMC board ensures the smooth running of an estate. Licensed by the Property Services Regulatory Authority, and usually a member of a professional body, a proactive agent can make all the difference to residents' experiences.

Legacy construction defects arising during the so-called Celtic Tiger period are seen as a drag on acceptance of apartment living. Corrective measures will encourage the restoration of confidence.

Other trends

The advent in Ireland of the institutional landlord, be that a Real Estate Investment Trust (REIT), international investment fund, or other corporate provider, can bring new approaches to apartment management.

The internationally mobile cohort of a workforce typically has housing needs that differ from those of residents with stronger or deeper ties to a locality. A variety of tenures, a wider range of on-site managed services, such as laundry and

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entertainment, and diversity in home configurations, are some of the innovations available through the build-to-rent model.

Maturity

Reforms of funding and governance, confrontation of legacy issues, and greater involvement of tenants should help to address some of the negative perceptions in Ireland of apartment living. The regulation of service providers to the sector continues to improve; management agents are by law now required to undertake minimum levels of training and professional development.

Greater public awareness of the variety of tenures on offer, and of the benefits and efficiencies of high-quality shared amenities can contribute to successful apartment living.

¹ *Population and Labour Force Projections 2017–2051*

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