

THE **LAW SOCIETY**
OF NORTHERN IRELAND



Multi-Unit Developments

Discussion Paper

www.lawsoc-ni.org

About The Law Society of Northern Ireland

The Law Society of Northern Ireland is the professional body which has the authority to discipline, educate and regulate practising solicitors in Northern Ireland.

Since its establishment in 1922 under Royal Charter, The Law Society of Northern Ireland has played a positive and contributory role in helping to shape the legal system within Northern Ireland.

By virtue of the Solicitors' (Northern Ireland) Order 1976, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public. It carries out these functions to enable them to provide a quality service to their clients.

Membership of the Law Society of Northern Ireland

The Law Society of Northern Ireland has a membership of over 2400 solicitors. The Law Society is composed of an elected Council of 30 members, all practising solicitors, who serve on a voluntary basis.

The Council is guided by the Presidential team which consists of the **President, Senior Vice President and Junior Vice President.**

Each member of the Presidential team is elected to office and serves a year in each of the three positions.

A list of current Council members and the Presidential team of The Law Society of Northern Ireland is available for download from

www.lawsoc-ni.org

Membership of the Multi-Unit Developments Working Group

The Multi-Unit Development Working Group was established in February 2010 to consider the issue of multi-unit developments and how the law protects the interests of home owners living within multi-unit developments.

The membership of the Multi-Unit Development Working Group is composed of practising solicitors and is serviced by the Law Society Secretariat.

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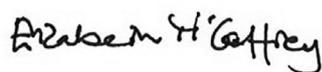
Foreword

Arguably the most significant change in the housing stock in Northern Ireland in the last thirty years has been the marked increase in the number of apartments throughout the province. In addition, planning requirements for management of “green spaces” in new housing developments has meant that management companies which own and manage the common areas in developments, whether of apartments or houses, have become a regular feature of many property owners’ lives. Concerned by anecdotal reports about poor management of some such “multi-unit developments”, the Law Society decided to set up a Working Group to investigate the public interest issues involved. I would like to thank all the members of the Working Group and our secretary, Colin Caughey, for their contributions and hard work over the last year.

This discussion paper is our initial contribution to a debate which we believe will develop over the next few years. It draws on the experience of managing agents and our conveyancing colleagues in the solicitors’ profession and considers the relevant law and practice in our neighbouring jurisdictions. It also identifies areas where we believe change is needed to protect the long-term interests of property owners. To complement this paper, we will also be publishing leaflets for prospective owners of apartments or houses with common areas. These will provide the public with some basic information and questions they need to ask before buying a property in a multi-unit development.

The Law Society is not alone in recognising the importance of these matters. The Northern Ireland Law Commission has, for some time, been carrying out a review of the law relating to multi-unit developments. Minister for Finance & Personnel, Mr Sammy Wilson MP MLA, has established a cross-departmental working group to investigate the issue and Kieran McCarthy MLA, has for sometime been highlighting the issue, most recently through the introduction of a Private Member’s Bill on the subject.

We look forward to working with all the stakeholders involved to promote measures which will protect the long-term viability of multi-unit developments.



Elizabeth McCaffrey
Chairwoman

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Executive Summary

Chapter 1 – Introduction

The introduction discusses developments in the Northern Irish housing stock, most significantly the increase in the number of multi-unit developments. The term multi-unit development is defined and it is noted that it includes both apartment blocks and housing developments with communal areas and amenities. The content of the discussion paper, which will primarily focus on apartments, is outlined.

Chapter 2 – Background to the Paper

The Law Society of Northern Ireland is the professional body for solicitors in Northern Ireland. Where the Society identifies a matter of public interest which presents a case for reform of the law, it will raise the matter with Government and other interested stakeholders in order to encourage public discourse. The issue of multi-unit developments and the need to protect unit owners against their properties falling into disrepair presents such a case. In preparing this paper, the Society has researched the matters, discussed the issues with other stakeholders and sought the views of the solicitors' profession.

The Society is by no means the only party to have identified this matter as one of public concern. In particular, work has been brought forward by the NI Law Commission, the Minister for Finance & Personnel, Mr Sammy Wilson MP MLA, who has established a cross-Departmental Working Group and Kieran McCarthy MLA who has introduced a private members bill on multi-unit developments to the Assembly.

Chapter 3 – Model Case

This chapter provides a summary of a model case of a multi-unit development being established, the units being sold and an appropriate arrangement for the management of the development being put in place and worked. The chapter provides details on the complex nature of management companies.

Chapter 4 – Comparative Research

This chapter provides a summary of legal developments in other jurisdictions, with the aim of assisting unit owners. In England & Wales, unit owners have been provided with a right to assume responsibility for the management of a development where the majority of unit owners agree. For future multi-unit developments, a new system of property ownership, the commonhold estate, has been established which is designed to provide

a legal framework for the management of multi-unit developments. In the Republic of Ireland, the need for legislative change to protect unit owners has been the subject of debate for some years. Following these discussions, a Multi-Unit Development Bill has been introduced to the Oireachtas and, as at the time of writing, is with the President for her signature. The legal position of Scotland, where tenements (early forms of multi-unit developments) have existed for many years, is also summarised.

Chapter 5 – Issues

The Society, informed by the accounts of solicitors in private practice, identifies the principal problems faced by persons living in multi-unit developments and the issues which lead to those problems arising. Issues identified include:

- the lack of an adequate arrangement for the management of the communal areas and amenities;
- the absence of adequate provision for a sinking fund – a fund to provide for significant works such as re-roofing, re-plumbing or other works needed for the developer to ensure the long term sustainability of the building;
- the importance of developers meeting their responsibilities;
- the importance of the relationship between management companies and unit owners; and
- the importance of management companies maintaining effective control over their agents, particularly when it comes to instructing service providers and dealing with funds.

Chapter 6 – Consideration of Issues

The identified issues are discussed in this chapter, with a view to seeing how they can be managed to ensure they do not become problematic for unit owners. This considers the components of a reform initiative. It is considered that a reform initiative should:

- ensure all parties are fully informed of both their rights and responsibilities under the legal arrangements governing the development;
- ensure unit owners are appropriately informed about the management of their development
- empower management companies in instructing their agents; and
- ensure that developers meet their obligations, particularly in relation to the vesting of their legal interest in communal areas upon completion of the final unit.

Chapter 7 – Findings & Proposals

The discussion paper does not arrive at conclusions; it instead proposes a range of matters that require further consideration in the debate around protection for unit owners.

Legal Arrangements

In terms of the legal arrangements put in place for the management of multi-unit developments, the issues requiring further consideration are:

- a) whether the management company arrangement is suitable for smaller developments and if not, what the alternative should be;
- b) how adequate provision can be made for sinking funds and how a determination can be made as to the appropriate levels of sums to be invested in the sinking fund;
- c) what measures can be taken to assist not only developments going on the market in the future, but also those that already form part of the Northern Ireland housing stock.

Developers

In terms of developers, the issues that need further consideration are:

- a) how to ensure that developers make adequate provision for the management company at the time of preparing the unit owners' leases, transfer agreement, company constitution and other documents;
- b) how to ensure that in the time period between the sale of the first unit and sale of the last unit that the development is appropriately maintained, that the collection of service charge is fair, and any service charge monies are appropriately invested or applied and not used inappropriately i.e. for snagging issues;
- c) how to ensure that developers appropriately vest their reversionary interest in the management company at a point in time.

Unit Owners and Management Companies

In terms of unit owners, issues requiring further consideration are:

- a) how to ensure prospective unit purchasers are fully conscious of the responsibilities and liabilities involved in owning a unit within a development at the time of purchase;
- b) how to encourage unit owners to become more involved in the running of their management company;
- c) whether the structure and working arrangements of management companies are suited to the management of apartment blocks;
- d) how to ensure there is appropriate facility for the resolution of disputes among unit owners, between unit owners and the management company and between the management company and the managing agent;
- e) what assistance can be offered to management companies when appointing and overseeing the operations of a managing agent.

Managing Agents

In terms of managing agents, the issues requiring further consideration are:

- a) whether a case exists for some form of regulation of managing agents and what form such regulation should take;
- b) whether standardised terms of engagement should be put in place to assist management companies when instructing managing agents.

Chapter 1 Introduction

1.1

The past decade has seen significant changes to the Northern Irish housing market. Years of economic growth resulted in significant increases in the value of housing, with the average house price rising from £101,759 in the second quarter of 2003 to £240,408 in the second quarter of 2008 and falling to £148,243 in the third quarter of 2010.¹ The past decade has also seen significant changes to Northern Ireland's housing stock; there has been a dramatic increase in the number of apartments and other types of homes, which could be classed as multi-unit developments.² This reflects a move towards higher density living which is often more affordable as construction costs are lower and less land is required.

1.2

The term "multi-unit development" is relatively new and for the purposes of this discussion paper, we will define it in its broadest sense, incorporating both apartment blocks and housing developments with shared communal areas and amenities. The key characteristic of a multi-unit development is that it involves some form of communal area and/or services, which must be maintained and managed, to ensure owners of individual units are collectively able to enjoy the benefits of the communal area or services, where these are not adopted or maintained by a public authority.

1.3

Government has been conscious to ensure that as the move towards higher density housing takes place, sufficient provision is made for common spaces in developments as a whole. As is stated in Planning Policy Statement 8 (PPS 8): Open Space, Sport and Outdoor Recreation:³

"Providing public open space as an integral part of a housing scheme contributes to the creation of a sustainable and quality residential environment. It has both recreational and social value, and helps to create a sense of identity. The 'greening' of an area can also contribute to people's health, well-being and quality of life, particularly that of children, and can help promote biodiversity."

1.4

In this paper consideration will primarily focus on apartments, as opposed to private housing estates without apartments. The terms of planning permission for both forms of development will require some form of management to ensure the sustainability of the development particularly for the more dense forms of development and apartment blocks.

1.5

As a result of this planning policy, developers are generally required to provide public open spaces and landscaped areas. These form part of

¹ University of Ulster 'Northern Ireland Quarterly Price Index', Reports Numbers 75, 95 and 104

² Northern Ireland Housing Executive 'Housing Market Review and Prospects 2010 – 2013' Belfast October 2010

³ Para 5.11

the common areas which must be maintained. In larger developments, developers are often required to make enhanced provision of infrastructure such as community centres, roads/footpaths and even transport – obligations that often are reflected in a Planning Agreement entered into under article 40 of the Planning (NI) Order 1991 (as amended). These areas and/or services also form part of common usage which must be maintained for the benefit of all owners/occupiers within the development.

1.6

If common areas such as green spaces fall into disrepair, this can hinder unit owners' enjoyment of their property. Where communal services or common parts of a building, such as the sewage system or roof, fall into disrepair this can even more directly impact the unit owners' actual use of their property. A number of such cases have recently been highlighted. This has led to concerns that the current arrangements which are often put in place to provide for the maintenance and upkeep of communal areas and services (often on a basis that is dictated by the Developer) are inadequate and require review.

1.7

The purpose of this discussion paper is to highlight the key issues relating to the management and maintenance of communal areas and services within multi-unit developments. The paper will refer to developments in other jurisdictions. Where appropriate, the Law Society will refer to views expressed by members of the solicitors' profession.

1.8

As will be demonstrated from the following chapters, the system for the maintenance and repair of multi-unit developments is dependent on a range of parties executing their responsibilities effectively. Where this does not occur, a development's shared amenities and common areas can quickly fall into disrepair and unit owners' enjoyment of their properties can be hindered or their value is impaired. This document will discuss measures which could assist key stakeholders in meeting their respective responsibilities. Chapter 2 will consider the background to the paper including other initiatives which have been taken with respect to multi-unit developments. Chapter 3 will provide a summary of the current established practice for making provision for the management and maintenance of multi-unit developments. In Chapter 4, the provision in other jurisdictions, namely England & Wales, the Republic of Ireland and Scotland, will be considered. Chapter 5 will discuss the issues identified by the Law Society in its evidence gathering exercise. Chapter 6 will then consider the possible solution to the issues raised; findings will be discussed at Chapter 7. An annex contains definitions of terms in common usage placed in context in relation to multi-unit developments.

Chapter 2

Background to the Paper

2.1

This report has been prepared by the Law Society of Northern Ireland. The Law Society is the professional body established by Royal Charter and invested with statutory functions in relation to solicitors (primarily under the Solicitors' (NI) Order 1976, as amended). The functions of the Society are to regulate responsibly, and in the public interest, the solicitors' profession in Northern Ireland and to represent the views of the profession.

2.2

The Law Society represents over 2,400 solicitors working in some 550 firms based in over 74 geographical locations throughout Northern Ireland. Members of the Law Society represent private clients in legal matters. Given the role played by solicitors, the Law Society considers itself uniquely placed to inform policy and law reform discourse relating to justice issues.

2.3

As it contributes to policy and law reform discourse, the Law Society ensures that adequate regard is given to human rights and equality considerations and to the need to ensure justice is accessible for those who seek it. The main method by which the Law Society does this is through responding to Government consultations. However, where the Law Society identifies a matter of public interest which presents a case for reform, it will raise awareness of this within Government, contribute to political discourse and, where appropriate, advocate for reform.

2.4

In this discussion paper the Law Society is highlighting an issue of public interest. The Law Society anticipates that this paper will contribute to current political discourse relating to how the law can be developed to ensure that it appropriately protects those living within multi-unit developments.

2.5

The Northern Ireland Law Commission included a project reviewing the law relating to multi-unit developments in its First Programme of Law Reform. Work on this project continues and the Law Society has met with the relevant personnel within the Commission on a number of occasions. On the 9th November 2009, the Northern Ireland Assembly passed a motion calling for the regulation of multi-unit developments. At the conclusion of this debate, the Minister for the Department of Finance & Personnel, Mr Sammy Wilson MP MLA, undertook to establish a Cross-departmental Working Group to consider this issue. It is understood that this initiative has been carried forward. Kieran McCarthy MLA, having proposed the original motion and engaged in consultation with the Law Society amongst

others on the topic, introduced a Private Member's Bill entitled 'Apartment Developments' Management Reform Bill', to the Assembly on 15th November 2010. This Bill proposes wide ranging reforms of the law relating to multi-unit developments. Mr McCarthy's Bill has generated significant interest in the issue of multi-unit developments and the case for reform.

Methodology

2.6

The objective of the Law Society's evidence gathering and research in the preparation of this report has been to assess the extent of problems faced by unit owners living within multi-unit developments and to gather views on the appropriate options for reform.

2.7

The Law Society established a specialist Committee of interested practitioners in June 2010. This Committee included representatives from the Law Reform, Non Contentious Business and Home Charter Committees of the Law Society.

2.8

All Committee members are experienced conveyancing practitioners. The Committee's remit is to identify factors inhibiting unit owners' peaceful enjoyment of their properties contained within multi-unit developments and to identify initiatives that could be undertaken to assist unit owners.

2.9

The Committee took the views of its own members and the views of the Law Society's specialist committees to inform its initial thinking. The Committee met with Neil Faris, the Commissioner in the NI Law Commission with responsibility for the multi-unit development project. The insight and assistance of the NI Law Commission was helpful in scoping the Law Society's own project. Comparative research was carried out in relation to initiatives taken in the other UK jurisdictions and the Republic of Ireland. Following initial considerations, it was felt important that the views of managing agents should be obtained and the Committee invited representatives of managing agents operating in Northern Ireland to meet with them. Five managing agents accepted the invitation and the Committee had a full and frank discussion with managing agents on the issues they face when managing units and the requirements which they are under when doing so.

2.10

Following on from this meeting, the Law Society felt it would be useful to gather the views of the solicitors' profession. The Committee decided

to design a bespoke questionnaire for solicitors inviting specific views on their experiences when advising clients on matters relating to multi-unit developments. The purpose of the questionnaire was twofold; first to identify the extent of the problems relating to multi-unit developments and secondly, to gather views on possible initiatives to alleviate these problems. A second bespoke questionnaire was developed and dispatched to managing agents. The Law Society wishes to thank all the solicitors and managing agents who returned the questionnaires.

2.11

SLS Legal Publications in conjunction with the Law Society held two seminars on the topic of multi-unit developments. These were held in Belfast and Armagh with over 100 attendees. At each event the potential for reform was discussed and copies of the questionnaire were distributed.

2.12

The Law Society would highlight that this paper has been informed primarily by the experience and views of members of the solicitors' profession. Whilst the Committee found meeting with managing agents helpful, only a very small number of managing agents submitted detailed responses to the questionnaire. On publication of this paper, the Law Society hopes to engage more fully with managing agents. This discussion paper is the Law Society's contribution to the continuing discourse around what initiatives can be taken to ensure that the law adequately protects unit owners living within multi-unit developments.

Chapter 3

Model Case

3.1

The purpose of this chapter is to inform readers as to the arrangements which are commonly put in place to provide for the management of multi-unit developments and how these should ideally work in practice.

3.2

Those purchasing an apartment will usually purchase a leasehold title to the property. It is common practice for such leases to be for a very long period of time, for instance 999 years. At the time of sale, the unit owner will be the lessee and the developer the lessor. The unit owner will have exclusive ownership of the residential unit, normally including internal structures, internal walls, floors and ceilings. The developer will usually retain ownership of the common parts and structures of the building and the surrounding communal areas. The common parts of the building or development will often comprise the lifts, communal corridors, stairways, gardens, central electricity supply, central gas supply, sewage works and any internal roads. Most significantly they will include the external walls, structure and roof of the building. These common areas and amenities must be effectively maintained to ensure that all unit owners are able to benefit from them. Therefore provision must be made for the maintenance and management of communal areas and services.⁴

3.3

It has become common practice for a management company to be established to take on the responsibility for the upkeep and maintenance of the communal parts. The developer will normally establish and register the company with a view to transferring his interest in the development (including the common areas and services) to that company on completion of the development. His involvement should normally cease once all units are sold, at which point the members of the company will be the unit owners. The company constitution will reflect its purpose of managing a particular development. The lease for each unit will also contain the apartment owners' responsibilities in relation to the common areas including, most significantly, the responsibility to pay a service charge. It is the management company's collection of that service charge which then provides the funds which allow for the maintenance of the common parts and provision of services. As part of the initial sale, the unit owner will receive a share in the management company, as will all the other unit owners in the development.

3.4

At the completion of each development, the members of the company will be the unit owners; they are therefore the owners of the management company and responsible for its day to day running. Whilst the unit owners will each take a share in the company, it is unlikely that the unit owners will

⁴ Sarah Witchell 'Residential Property Law in Northern Ireland' (Belfast: SLS Legal Publications 2000) pgs 84-95

have full voting rights until such time as all units within the development have been sold. Thus it is common practice for the developer to retain control of the company until the last units in the development are sold.

3.5

Once all units have been sold however, each unit owner should have full voting rights. The developer should transfer his/her reversionary interest in the common parts, and/or surrounding common areas, to the management company. Good practice would suggest that within the purchase documentation there should be clear provisions as to when the developer will cede control of the management company and the point at which he is obliged to transfer his interest in the common areas to the management company. It is only when both steps have been taken that the management company becomes fully operational. As a result, there may be a conflict of interest between the developer and the apartment owners during the initial years of operation of the management company.

3.6

From the transfer of full control by the developer, the management company will then be run by the residents who appoint a company secretary and directors, have annual accounts prepared, organise annual general meetings and, in normal course, should make the necessary annual return to the Companies Registry and hold meetings etc. The management company from that point should also ensure the upkeep and maintenance of communal areas and parts and will insure the building (and all relevant common areas) – all being financed by way of the service charge which all unit owners must pay. The management company may rectify and continue interim arrangements put in place by the developer on a short term basis.

3.7

In well organised developments, a proportion of the moneys collected by way of the annual service charges should be placed in a 'sinking fund'. This is a fund established to deal with one-off exceptional expenditure to ensure the long term sustainability of the development. The proportion of moneys gathered by way of the service charge invested in the sinking fund should be clearly identified and separately invested.

3.8

It is likely that the residents running the management company will not wish to undertake the day to day maintenance of the development themselves and they may instruct a managing agent to undertake this task or reaffirm an appointment already made by a developer on an interim basis. Managing agents are firms who are instructed by developers or management companies to ensure the upkeep and maintenance of

developments. They will be paid an annual fee and a representative of the managing agent may take on a role as one of the directors or secretary of the management company. The management company should formally instruct a managing agent and the terms of their instructions should identify the duties the managing agent shall be required to perform. Ideally the services and performance criteria should be recorded in a Management Agreement where the services are set out in detail. These are likely to include; maintenance of communal electricity, sewage, heating and security systems; waste disposal, cleaning of communal areas, corridors, windows, and stairwells and maintenance of communal services such as lifts. The managing agent is likely to collect the service charge monies on the management company's behalf and hold funds pending their application on the payment of the services. Importantly this includes the 'sinking fund'.

3.9

The managing agent may have its own personnel who carry out the necessary works or may contract with service providers. Where significant works are required, such as repainting the development or repairing the roof, which is likely to be funded by way of the sinking fund, the managing agent should advise the management company accordingly and await their direction. The management company may direct that a tendering exercise take place.

3.10

The managing agent should be appointed for a prescribed time and their efficiency should be scrutinised by the company secretary and company directors.

Chapter 4

Comparative Research

4.1.1

In this chapter, consideration will be given to initiatives undertaken in other jurisdictions to make adequate provision for multi-unit developments and unit owners.

4.2.1

In England & Wales, two significant initiatives have been made with respect to multi-unit developments, blocks of apartments in particular.

(I) England & Wales

4.2.2

The Commonhold and Leasehold Reform Act 2002 introduced a form of estate ownership specially designed as a new form of landholding for blocks of apartments and other multi-unit properties, such as office blocks. Commonhold is designed to meet the perceived shortcomings of leasehold interests, particularly as viewed from the perspective of the lessee.⁵

4.2.3

Under the commonhold scheme each 'unit-holder' takes a registered freehold estate by way of exclusive ownership of his or her individual unit and also becomes a member of a management or 'commonhold association' which owns the common parts of the grounds and building. The commonhold association will be the registered proprietor of the common parts and is the vehicle through which the common parts are managed. The commonhold association will be a company limited by guarantee and its powers will be specified in its memorandum and articles of association.⁶

4.2.4

There will be a commonhold community statement dealing in detail with the rights of the unit holders and their relationship to the commonhold association. The commonhold community statement must not prevent or restrict the transfer of a freehold estate in a commonhold unit, although on any transfer the new unit-holder has a statutory obligation to notify the commonhold association of the transfer.

4.2.5

The commonhold community statement allocates the benefit and the burden of matters such as support, access, services, defects, repairs and common facilities and must also require the commonhold association to insure, repair and maintain common parts of the development.

4.2.6

Commonhold may exist only in relation to registered land and only in respect of land registered with absolute title. A commonhold may arise either;

⁵ Chris Baker 'Commonhold' 28 November 2005 available at www.practicalconveyancing.co.uk

⁶ Philip Freedman, Eric Shapiro & Brian Slater 'Service Charges Law & Practice' 4th Edition (Bristol: Jordan 2007) pg 214

- (i) on the application of a person who is the registered freehold proprietor of a new development and who wishes to establish a commonhold as the preferred method of utilising the site; or
- (ii) by conversion of an existing development (e.g. a leasehold block of apartments) into a commonhold.

4.2.7

The number of commonhold estates created in England & Wales is reported to be exceptionally low.⁷ It has not proved popular with developers. Members of the legal profession have been unable to encourage developers to establish developments on a commonhold basis.

4.2.8

Under established practice in England & Wales, landlords/developers often retain ownership of communal parts and areas and charge unit owners a service charge. The 2002 Act also provides a procedure whereby tenants of a self contained building consisting of two or more apartments who have a long lease may obtain the right to manage the property in replacement of the landlord or landlord's agent, as named under the head lease.

4.2.9

Tenants who have a long leasehold interest in an apartment block may set up a Right To Manage Company (RTM Company), which must be a private company limited by guarantee. To obtain the right to manage the flat the Company must consist of over one half of all qualifying tenants and must make provision for all qualifying tenants of apartments in the premises to become members.⁸

4.2.10

At least 14 days before giving notice to the landlord, a RTM Company must give notice to all those qualifying tenants of apartments in the premises who have not already become members of the Company, inviting them to participate. The notice should include the names of the members who have set up the RTM Company; its current directors and secretary and details of any members who claim to have residential management experience or qualifications to enable them to manage the property without the assistance of managing agents.

4.2.11

Once 14 days have passed the RTM Company must serve notice on the landlord of its claim to acquire the right-to-manage the premises. This notice must contain details of the premises, the names of members of the RTM Company, the name and registered office of the RTM Company, a date by which the landlord may respond by counter notice, and a date on which the RTM Company intends to acquire the right-to-manage the premises.

⁵ As of 3 June 2009, there were 12 commonhold residential developments comprising 97 units in England and one commonhold residential development, comprising 30 units, in Wales. House of Commons of the United Kingdom, Michael Wills Written Questions, 9 June 2009 col. 792W Commonhold

⁸ See footnote 4 pages 161-163

4.2.12

A landlord can only issue a counter notice if satisfied that the RTM Company has failed to comply with the statutory procedure for acquiring the right to manage. If such a notice is received the RTM Company may refer the case to the Leasehold Valuation Tribunal (LVT). If the LVT determines that the company is entitled to acquire the right-to-manage the premises, the right is acquired one month after the date of the determination.

4.2.13

Once the right-to-manage becomes exercisable; the right can be protected by the registration of a caution against the title to the premises at the Land Registry.

4.2.14

Whatever the outcome of the claim, the RTM company will be liable to pay, in addition to its own costs, the costs reasonably incurred by the landlord in consequence of the claim notice being given to them.

4.2.15

The RTM Company will take over from the landlord those obligations in the flat leases which constitute 'management functions'. The RTM Company also takes over the power to exercise those rights under the leases that relate to these obligations, such as the right to collect service charges. Importantly there is no compulsion in the legislation for any contracts regarding the provision of services to transfer with responsibility for management.

4.2.16

A RTM Company fulfils a similar function to management companies in Northern Ireland, where the unit owners are the members of the company.

(II) Republic of Ireland**4.3.1**

In the Republic of Ireland during 2006 consumer associations and apartment owners' resident groups increasingly highlighted that significant difficulties were being encountered in the management and regulation of multi-unit developments. It was considered that these difficulties largely arose from a combination of two factors: poor governance arrangements, in which some developers retained inappropriate control over multi-unit developments, and an understanding deficit among apartment purchasers, who seemed to be unaware of the consequences of buying an apartment in a development by contrast with buying a detached dwelling.⁹

⁹ National Consumer Agency 'Buying and Living in a multi-unit development property in Ireland' (Dublin: NCA 2009) pgs 1-3

4.3.2

During 2007 and early 2008, a number of interested bodies and Government Departments implemented initiatives aimed at assisting multi-unit owners. The Department of the Environment, Heritage and Local Government published a series of national guidelines and draft guidelines connected directly or indirectly with multi-unit developments. The most significant of these was the *Department's Development Management Guidelines: Guidelines for Planning Authorities*. This provides an overarching national framework for an integrated approach to housing development and sustainable planning.¹⁰

4.3.3

The Irish Home Builders Association published a *Code of Practice for Multi-Unit Developments*. This sets out key responsibilities for developers in the early stages of a development.¹¹ In connection with the legal structure for managing multi-unit developments, the Code requires the establishment of an owners' management company, that service charges and building investment funds (sinking funds) must be provided for; and that the developer must not retain a controlling shareholding in the owners' management company after its transfer to unit owners.

4.3.4

Furthermore regulation of property managing agents by the new National Property Services Regulatory Authority was introduced.¹²

4.3.5

The Law Reform Commission in the Republic of Ireland, following a consultation exercise, published a report on the issue of multi-unit developments in June 2008.¹³ The Report recommended significant changes to current legal arrangements relating to the management of multi-unit developments. These recommendations were largely included in the Multi-Unit Development Bill, introduced to the Seanad in June 2009. At the time of writing, the Bill has passed final stage and is now with the President.

4.3.6

Under the proposed Bill, developers of a multi-unit development must establish an owner's management company and transfer ownership of the common areas to it before any apartment is sold. The owner of each apartment will be members of the company with voting rights and should receive a copy of the annual report and be entitled to attend the annual general meeting which must be held at a reasonable time and within reasonable proximity to the development.

4.3.7

The company must establish a transparent scheme for the calculation and collection of a management fee. Service charges in respect of any unsold

¹⁰ Dublin June 2007

¹¹ 1st September 2008

¹² Property Services Regulation Act 2009

¹³ Law Reform Commission 'Report on Multi-Unit Developments' LRC 90 – 2008 Dublin

units must be paid by the developer. The company must make provision for a sinking fund in which each unit owner will be required to pay a minimum contribution of 200 Euro per annum. The company may also make House Rules to facilitate the quiet and peaceful occupation of the apartments.

4.3.8

For existing and new developments the Bill establishes a court based dispute resolution mechanism, which will have a strong emphasis upon mediation.

(III) Scotland

4.4.1

The Scottish legal system and profession are more accustomed to multi-unit developments due to tenement developments which have existed in the urban areas of Scotland for over 200 years.

4.4.2

The maintenance and management of tenement buildings has usually been set out in the title deeds of the property. Where the title deeds have been silent on a matter, terms can be implied by virtue of a default common law system.¹⁴

4.4.3

The Tenements (Scotland) Act 2004 was introduced to provide greater clarity in the law on tenements. The Act restated the pre-existing common law rules which demarcate ownership within a tenement. Most significantly the Act introduced a statutory management scheme called the Tenement Management Scheme. This Scheme acts as a default management scheme for all tenements in Scotland. This scheme provides a structure for the maintenance and management of tenements, where this is not provided for in the title deeds. It further provides for the apportionment of costs.

4.4.4

Whilst it is informative to refer to initiatives developed in other jurisdictions, it is important to ensure that the particular circumstances of this jurisdiction are taken into account. One particular distinction is the tendency in Northern Ireland to grant long leases for an exceptionally long length of time. In contrast, in England & Wales, particularly South East England, there is a tendency to grant leaseholds for a short period of time, for instance twenty years.

¹⁴ *Tenements (Scotland) Bill Consultation Paper*
Scottish Executive March 2003

Chapter 5

Issues

5.1

This chapter will identify the various problems encountered by individuals living within multi-unit developments and seek to identify the issues that resulted in such problems arising. The chapter will begin by looking at the legal arrangements which are commonly put in place for the management of multi-unit developments. The arrangements for provision of a sinking fund will be considered. It will then consider the role played by individual stakeholders.

(I) Legal Arrangement

5.2

The general consensus reflected in solicitor questionnaire responses was that the arrangement commonly put in place, namely a management company whose members are the unit owners, was the most appropriate for large multi-unit developments. However, respondents did highlight that the efficiency of this arrangement was dependent upon all parties meeting their respective responsibilities. The view that management companies were “only as good as the people who run them” neatly reflects the views expressed. In the following sections, this paper will look at how various actors, in particular unit owners, can impact on the effectiveness of this arrangement.

5.3

In relation to smaller multi-unit developments of five or less units, a significant number of respondents expressed the view that a management company was not always the most suitable arrangement. It was highlighted that such an arrangement could be disproportionately cumbersome and costly. The alternative arrangement of each unit owner owning the common areas and amenities in equal shares and each covenanting to contribute towards the maintenance and cost of maintaining same, was proposed by a number of respondents. It should be noted that the Multi-Unit Development Bill for the Republic of Ireland, discussed in Chapter 4 (which, if enacted, will put in place detailed arrangements for the management of multi-unit developments) relates only to developments of five or more units. The definition of multi-unit developments contained in this Bill is limited and covers apartment blocks only.

(II) Sinking Funds

5.4

As referred to in Chapter 3, it is important that provision is made for a sinking fund. A worrying number of solicitor respondents (68%) reported that they had encountered multi-unit developments where provision for a sinking fund had not been made. Respondents highlighted that the

absence of a sinking fund can lead to very significant problems when significant work is required to guarantee the long term sustainability of developments. The Law Society's Multi-Unit Development Working Group noted that developments currently forming part of the Northern Ireland housing stock are relatively new and serious issues have not arisen. However, for many developments, significant works will be required in the near future and where no provision had been made for a sinking fund, this will result in the current unit owners having to contribute significant sums of money or risk the development falling into disrepair.

(III) Developers

5.5

Developers have a particularly important role to play in ensuring the long-term sustainability of multi-unit developments. It is developers who will initially establish the management company, including its constitution. Developers will also determine the obligations under which unit owners will be placed.

5.6

Interim arrangements are often put in place prior to the sale of the final unit and the management company being fully operational. Such arrangements can last for a significant length of time, depending on the prevailing market conditions as developers are reluctant to give up control until they have sold all units. During this period the developer's nominees will collect service charge monies from unit owners who have purchased units. It is good practice for the developer himself to make some form of contribution towards the maintenance of the development for units that remain unsold but very often this does not happen, resulting in the costs of running the development being borne by the fewer owners. During this period, issues may emerge regarding the maintenance of the development. Unit owners may also be cautious that they are paying into a fund whilst they have limited or no input into how it is expended. A number of respondents highlighted concerns that service charge monies gathered during this period may not be put to their best use. In particular, two respondents gave examples of developments of which they were aware, where the developer appeared to use service charge monies to deal with 'snagging' issues, which were clearly solely his/her own responsibility.

5.7

Interim arrangements put in place by the developer may include the appointment of a managing agent to carry out the day to day maintenance of the development. It is understood that issues have arisen where developers have entered into a long term agreement with a managing agent, which is likely to remain in place prior to the sale of the final unit.

Issues have arisen where unit owners are dissatisfied with the level of service provided by the managing agent and the terms of the Management Agreement restrict the grounds upon which it may be terminated. It should be noted that a developer may appoint a managing agent on an initial short term basis with the expectation that the management company, when fully established, will continue on with the appointment. It is where the management company's power to terminate a contract is restricted that issues can emerge.

5.8

In response to a specific question on the topic, a number of solicitor respondents highlighted that they had encountered circumstances in which the developer's title in the development (including to the common areas) had not been appropriately vested in a management company, despite all units being sold and the developer being legally required to do so. In such circumstances, either inadequate provision had been made for the unit owners to insist upon or compel the transfer or the provisions relating to the management company had not been enacted.

5.9

Respondents highlighted that the developer's failure to appropriately establish a management company and transfer his/her reversionary interest in the common areas can result in significant problems relating to the long term sustainability of the development. In particular a number of respondents stated that they would advise a prospective purchaser not to purchase a unit within a development, where this had not occurred. The developer's failure to vest his/her title appropriately may therefore have quite significant repercussions for the value of the development and units within it.

(IV) Relationship between Management Company and Unit Owners

5.10

A recurring theme emerging from respondents was that management companies were only as effective as the people who ran them. Where a significant proportion of unit owners took an interest in the running of the management company and the maintenance of the development, the management company appeared to work very effectively and the development was appropriately maintained.

5.11

Difficulties can emerge where unit owners are disinterested in their role as members of the management company and/or in the maintenance of the development. This is considered to be a particular feature of apartment blocks, where unit owners often see their stay as short term for a few

years until they purchase a larger property. Furthermore purchasers will often purchase with the intention of renting out the property. In these circumstances, the legal owner will be distant from the issues affecting the development. The issue of whether the unit owner or his/her tenant are responsible for paying the service charge has also been identified as an area of contention.

5.12

Where unit owners are unwilling to invest their time in the management of the development, it can result in the management company ceasing to operate. In one example brought to the Law Society's attention, all unit owners simply refused to engage in the management company, with the result that it was 'struck off' the Companies Register for failing to make its annual return. The Registrar may strike off a company where it has cause to believe that the company is no longer carrying on business or is not in operation. Where a company has been struck off, significant effort is required on the part of the company members to restore the company to the register. In other cases brought to the Law Society's attention, managing agents demonstrated the problems they encounter when unit owners are disinterested. When annual general meetings of management companies are sparsely attended, the result can be that decisions relating to the maintenance and repair of the property are made by a small number of unit owners. This can leave managing agents in a difficult position as they may be instructed to carry out significant works and invest the company's funds by a small proportion of unit owners. Alternatively, they may not be able to arrange a quorate meeting of the management company, with the result that no decisions are taken.

5.13

There have also been many cases reported to the Law Society of unit owners refusing to pay their service charge. If a person has an issue in connection with the service charge it is recommended that they seek their own legal advice in relation to the matter. Often unit owners will refuse to pay their service charge when they are dissatisfied with the level of service provided by the managing agent/management company. It appeared from cases reported to the Law Society that dissatisfied unit owners would often cease paying their service charge as a matter of first recourse. Alternative possible solutions such as raising the matter with the management company secretary or calling an extraordinary general meeting of the management company were rarely investigated. The refusal of unit owners to pay service charges can often result in a withdrawal of certain services by managing agents. This can, in turn, result in other unit owners refusing to pay their service charge. The result can be a cycle of decline and the development can quickly fall into disrepair.

5.14

There are circumstances in which unit owners withdraw payment of their service charge as a means to encourage a management company or agent to execute their duties. Unit owners, particularly those who have recently purchased a unit, are often surprised by the level of service charge which they are required to pay. Many solicitor respondents highlighted that service charges are often disproportionately higher than what one would expect to spend in maintaining a detached property. Unit owners often simply cannot understand why service charges are charged at the level they are. This lack of understanding may be a consequence of unit owners not having service charges appropriately explained to them at the time when they purchased their property or, alternatively, this may reflect situations where service charges are unjustifiably high.

5.15

A refusal on the part of some unit owners to pay can result in all monies collected by way of the service charge being expended in the running maintenance costs of the development with the result that there are no additional monies to invest in the sinking fund. Managing agents have also informed the Law Society that unit owners during management company meetings will often oppose a proportion of the service charge being provided to the sinking fund as this will inevitably result in an increase in the service charge. This is a symptom of the short term view that unit owners often take.

(V) Managing Agent and Management Companies**5.16**

As noted earlier, management companies will routinely instruct managing agents to carry out the day to day management of the development. Whilst in these circumstances the managing agent is responsible to the management company, numerous examples were recounted by solicitor respondents which appeared to demonstrate that in many cases there had been a shift in power from the management company to the managing agent. The management company did not appear to be carrying out the role of an instructing party i.e. scrutinising the effectiveness of its agents and the activities of its agents in investing members' monies etc. Instead the managing agent appeared to be operating with a substantial degree of autonomy, even in relation to the spending of the service charge and sinking fund.

5.17

A number of examples were provided by solicitor respondents which appeared to suggest that managing agents were acting in their own best interests when it came to the instruction of service providers. Examples

were provided of managing agents instructing service providers with whom they had a pre-existing financial relationship on terms which may not be in the best interests of the unit owners. In certain circumstances a pre-existing relationship between a managing agent and service contractor is entirely appropriate, however where this does not represent value for money that is unacceptable. In one case, a managing agent instructed family relations to carry out works, who charged well above the going rate for the services provided.

5.18

Examples were also provided which appeared to suggest that the managing agent had failed to execute its duties effectively. In one case, the managing agent failed to submit the management company's accounts and annual return to the Company Registry with the result that the company was struck off. Further examples of managing agents failing to ensure that the development was properly maintained and kept in a suitable state of repair were provided. In a number of the examples provided, this resulted in the breakdown of communal services, such as lifts and even sewage works.

5.19

These examples should be considered in the light of comments made at paragraph 5.13, which emphasised that often management companies and unit owners are disinterested in the maintenance and upkeep of the development with the result that managing agents must act with limited guidance.

5.20

As noted earlier, unit owners dissatisfied with the level of service they receive will often refuse to pay their service charge. A protracted dispute can then emerge between unit owners, the managing agent and the management company. This is in none of the parties' interests.

Chapter 6

Consideration of Issues

6.1

In this chapter consideration will be given to the various issues identified in chapter 5. This chapter will consider what initiatives, if any, can be taken to alleviate the problems which the issues identified in chapter 5 created. The Law Society's intention in this chapter is not to put forward recommendations, but to raise possible solutions for the purpose of identifying what initiatives might be taken.

(I) Legal Arrangements

6.2.1

The Law Society has not identified strong opposition to the current common legal arrangement for the management of multi-unit developments, through the use of a management company composed of the unit owners.

6.2.2

However, research appears to suggest that this arrangement is not appropriate for smaller developments of five units or less. The maintenance of smaller developments appears to be more appropriately dealt with by alternative arrangements. A suggestion put forward by solicitor respondents to the questionnaire for small developments was that the unit owners own the communal areas as tenants in common, reinforced by reciprocal covenants and that unit owners covenant to contribute towards the maintenance of communal areas. This requires further consideration.

(II) Informing Unit Owners

6.3.1

Any initiative relating to multi-units developments must put the individual unit owner at centre stage. It must inform unit owners more fully of their rights and responsibilities and should provide them with the information they require to understand the practicalities of the management of the development in which they live.

6.3.2

It is of significant importance that prospective purchasers are informed of the unique aspects of living in an apartment at the point of purchase. Prospective unit owners must be fully advised of all potential liabilities and responsibilities they are assuming and estate agents have a key role to play in this in terms of the way they market properties. When advertising units for sale within developments, both established and new builds, it would be informative for future purchasers if advertising literature referred to and provided full details relating to the service charge and possibly the management of the development, including the role of the managing

agent. The recent introduction of the Consumer Code for Builders, under which purchasers of new properties are to be given details of the service charges etc, is to be welcomed and should be built on.

6.3.3

The solicitors' profession also play a key role during the purchase stage of informing and advising the prospective purchaser of their rights and responsibilities on purchasing the unit. To assist solicitors in advising unit purchasers, the Law Society is preparing an information leaflet for distribution to clients purchasing units within multi-unit developments. This leaflet will impress upon clients the importance of taking an active role in the management company, attending meetings, reviewing budgets etc. This is information which solicitors currently provide in meeting with clients, however the provision of literature is considered important as at the purchase stage often unit owners are primarily concerned with completing their purchase rather than the detail of their ongoing responsibilities. The leaflet can thus be retained as a reference point for the future.

6.3.4

The Law Society is also giving consideration to further developing existing guidance for solicitors when acting for purchasers of units within multi-unit developments. The Law Society's pre contract enquiries (sent by a purchaser's solicitor to the vendor's solicitor before the contract to buy the property is signed) raise a number of key questions relating to the level of service charge, the management of the development and the likelihood of significant work being required and its timing. Consideration is currently being given as to how these could be developed further.

6.3.5

Management companies clearly have a role to play in ensuring that unit owners and members are kept informed of and engaged in relevant issues regarding management of the development. Members are informed of the operation of the company via the annual report and annual general meeting. It is important that the annual report provides the members with sufficient information upon which to assess whether the management company has used the service charge monies under its control efficiently. The annual report should include details of income and expenditure, assets and liabilities (including those that are anticipated), annual service charges and sinking fund account, planned expenditure on maintenance and repair, insurance cover and contracts entered into by the company. Management companies should make every effort to ensure that unit owners are able to attend the annual general meeting. The venue and time should be convenient and copies of all relevant papers, including the annual report and budget should be provided well in advance.

6.3.6

To assist individual unit owners who wish to learn more about the operation of the management company, information relating to its operation and the management of the building should be readily available. This should include information and documentation relating to insurance, service and other contracts entered into, fire and safety certificate, service charge payments collected and the balance of the sinking fund. Such information should be provided to members on request and should be free of charge (perhaps by email).

6.3.7

Provision of information alone will not encourage unit owners to engage more fully with the management company. It may be that the standard structure and decision making arrangements for companies are not best suited for a management company. Whether standardised clauses for inclusion within the company constitution could be developed, should be considered. Such clauses could make provision for more innovative decision making arrangements for instance, the use of email to distribute information relating to the operation of the company and to make quick decisions.

6.3.8

As noted previously, significant difficulties can emerge when unit owners refuse to pay their service charge. Therefore any initiative aimed at improving the efficiency of management companies must look at how management companies can secure the flow of their income stream – the service charge. Consideration should be given as to what mechanisms can be put in place to ensure that service charges can be collected from those persons who refuse to pay without due cause. Given that unit owners may refuse to pay their service charge for a range of reasons, such a mechanism should include some form of dispute resolution service which resolves the issues raised by the unit owner.

6.3.9

There is an increasing practice of using inhibitions as a method of securing payment. An inhibition on a unit owner's title to their property would restrict their ability to sell the property until such time as they had paid all service charges for which they are liable. For a management company it means that they can be certain that at some point they will receive all service charges owing. However, difficulties can emerge which make their use questionable. This could be for instance if the unit owner cannot obtain a certificate that all service charge payments have been paid to date because the management company is not functioning properly.

(III) Empowering Management Companies

6.4.1

A general trend of management companies appointing managing agents has been identified. It is in the Law Society's view probable that this trend will continue as management companies are unlikely to take on a more hands on role in managing the development. Therefore something must be done to ensure the current arrangement works more successfully.

6.4.2

As discussed in Chapter 5, it appears that some management companies have entered into long term agreements with managing agents, the terms of which may not appear to always be in the best interests of the unit owners. Indeed, in certain circumstances discussed at paragraph 5.7, the agreement may be signed up before the unit owners buy their properties, having been negotiated by developers with no long term interest in the detail of the arrangements. The Law Society considers that it may be necessary to develop guidance for management companies when identifying and appointing managing agents. Management companies could also benefit from the development of a standard Management Agreement which they could enter into with managing agents. Management companies should also be encouraged to seek legal advice before entering into an agreement with a managing agent.

6.4.3

Management companies would clearly benefit from having some form of assistance in overseeing how managing agents execute their responsibilities and most importantly how they handle the management company's funds, including the sinking fund. This is an issue which will be given detailed consideration in the next section.

(IV) Managing Agents

6.5.1

The Law Society's evidence gathering suggests that there would appear to be significant disparities in terms of the level of service which managing agents provide to their clients. Incidents of managing agents providing a poor service to their clients have been identified in the responses provided by solicitors.

6.5.2

The Law Society's questionnaires, which were distributed to solicitors and managing agents, had a specific question on whether managing agents should be subject to regulation. The vast majority of solicitor respondents stated that they felt that the public would benefit from managing agents

being subjected to some form of regulation. The questionnaire invited comments on what form such regulation should take.

6.5.3

Solicitor respondents stated that statutory regulation should place requirements on those wishing to operate as managing agents to undertake professional training and to meet certain experience requirements. In relation to managing agents, it was felt that regulations should be introduced on how they operate. Most significantly it was suggested that managing agents should be required to comply with stringent requirements governing the circumstances in which they should hold clients money and the safeguards they should put in place to avoid misuse. To ensure compliance, managing agents should be subject to regular inspection. Given that managing agents can hold significant funds on behalf of management companies (particularly where sinking funds are involved), it was felt that managing agents should be required to hold professional indemnity insurance, to indemnify clients against any potential risk.

6.5.4

It was also proposed that, given that managing agents instruct other service providers on the management company's behalf, they should be required to avoid conflicts of interest and to fully disclose to the management company where they have a potential conflict of interest.

6.5.5

In relation to their activities when managing a development on a management company's behalf, it was suggested that managing agents should be required to produce yearly plans of work along with proposed budgets, which must be approved by management companies before expenses can be incurred. In relation to fees which managing agents may charge, it was felt that a scale of recommended fees should be developed. For significant works, such as the painting of a large development or the repair of a leaking roof, it was believed that, in appropriate circumstances, managing agents should be required to give consideration to the necessity of conducting a tendering exercise for such works.

6.5.6

The Law Society considers that significant consideration is required as to the form which the regulation of managing agents should take. Given the scarcity of public funds and the small number of managing agents operating in the Northern Ireland market, the potential for some form of statutory regulation is unclear. It may be possible simply to encourage standardised terms of agreement for management companies to use when instructing managing agents and to encourage self regulation

by responsible managing agents. This is an issue requiring further consideration. However, there may be a need for a body that can receive and investigate complaints and ensure compliance. This is a matter requiring further detailed consideration.

(V) Developers

6.6.1

Developers have an important role to play in ensuring the long term sustainability of developments which they have constructed. It is developers who are responsible for instructing their solicitors on the drafting of all relevant legal documentation, which will make provision for the management company and make provision for the maintenance of the building, including identifying lessee/unit owner's rights and covenants. Consideration should be given as to how developers can be encouraged to ensure the most appropriate legal arrangements are put in place.

6.6.2

It is clearly of significant importance to the sustainability of the development and the value of the units contained within it that the developer vests his/her title to the common areas in an established management company, when it is appropriate for him/her to do so. It is important that detailed consideration is given as to how developers can be obliged to execute this duty.

6.6.3

The Law Society's questionnaire invited the views of practitioners on whether developers should have a legal responsibility to vest his/her title to the common areas in the management company, prior to completion. This question received a mixed response from solicitor respondents. Those in support stated that this would ensure that unit owners were involved in the management of the development from the outset encouraging participation. It was also considered that it would prevent the developer from taking on an unnecessary role in the long term management of the development. In particular, it would prevent the developer from appointing a managing agent on a long term contract without termination rights. Those in opposition highlighted that until the development is complete, the entire context of the boundaries is unknown and release of control could create mapping problems that are difficult to resolve. Even once units are on sale, developers are likely to have a long list of snagging issues to complete. Indeed whilst the units are on sale the developer will have a vested interest in ensuring that the development is presentable to potential purchasers. Developers may also have planning obligations which must be complied with.

6.6.4

A number of respondents suggested alternative arrangements. These included placing a requirement to complete the construction of the development fully, prior to the sale of a unit and to vest title of the common areas in the management company on the sale of the first unit. This alternative could see the developer establishing the management company with him/herself as the sole member and as units were sold, his/her shares would be transferred to the unit owners, including voting rights. Under this arrangement, the developer would be required to pay a service charge for the units of which he is the owner, until they are sold. Safeguards would have to be put in place to ensure that the service charge monies could not be used to deal with snagging problems. This alternative could lead to problems where the developer, acting as the sole or majority share holder in the management company, contracts with a managing agent to provide its services for a significant length of time. However, safeguards could be put in place to restrict this from occurring. Further alternatives included as an appropriate point for the trigger of a transfer once half of all units had been sold or after the development had been completed for three years.

6.6.5

The questionnaire invited views from respondents as to how the developer's obligation to vest his/her title to the common areas in a management company should be enforced. A number of respondents stated that the current methods of enforcement, namely the developer entering into a formal agreement to transfer his/her interest on the sale of the final unit, or by a lessor's covenant, enforceable by an action in the High Court for breach of covenant, were the most appropriate arrangements. A more significant number of respondents appeared to be of the view that this method was inappropriate as it was reliant upon unit owners taking an action in the High Court at significant expense. The majority of respondents stated that a statutory duty should be placed upon the developer with, a failure to comply punishable by way of a fine.

6.6.6

A significant minority of respondents suggested that there should be some form of financial incentive for a developer to vest his/her title in the management company. Suggestions included that a proportion of the purchase price for each unit could be held back until the developer's title was vested appropriately. The imposition of a planning condition upon a developer was also discussed.

Chapter 7

Findings and Proposals

7.1.1

In this chapter, the Law Society will summarise its research findings and mention those areas where further work is required in the hope of informing continued discussion. It should be highlighted that as the debate relating to the management and maintenance of multi-unit developments is still in its early stages, the views expressed by the Law Society in this paper are simply preliminary observations based on the evidence which has been gathered to date. The Law Society looks forward to further engagement with key parties in relation to this matter in the coming months.

(I) Legal Arrangements

7.2.1

In terms of the legal arrangements put in place for the management of multi-unit developments, the issues requiring further consideration are;

- a) whether the management company arrangement is suitable for smaller developments and if not, what the alternative should be;
- b) how adequate provision can be made for sinking funds and how a determination can be made as to the appropriate levels of sums to be invested in the sinking fund;
- c) what measures can be taken to assist not only developments going on the market in the future, but also those that already form part of the Northern Ireland housing stock.

(II) Developers

7.3.1

In terms of developers, the issues that need further consideration are;

- a) how to ensure that developers make adequate provision for the management company at the time of preparing the unit owners' leases, transfer agreement, company constitution and other documents
- b) how to ensure that in the time period between the sale of the first unit and sale of the last unit that the development is appropriately maintained, that the collection of service charge is fair, and any service charge monies are appropriately invested or applied and not used inappropriately i.e. for snagging issues;
- c) how to ensure that developers appropriately vest their reversionary interest in the management company at a point in time.

(III) Unit Owners and Management Companies

7.4.1

In terms of unit owners, issues requiring further consideration are;

- a) how to ensure prospective unit purchasers are fully conscious of the responsibilities and liabilities involved in owning a unit within a development at the time of purchase;
- b) how to encourage unit owners to become more involved in the running of their management company;
- c) whether the structure and working arrangements of management companies are suited to the management of apartment blocks;
- d) how to ensure there is appropriate facility for the resolution of disputes among unit owners, between unit owners and the management company and between the management company and the managing agent;
- e) what assistance can be offered to management companies when appointing and overseeing the operations of a managing agent.

(IV) Managing Agents

7.5.1

In terms of managing agents, the issues requiring further consideration are;

- a) whether a case exists for some form of regulation of managing agents and what form such regulation should take.
- b) whether standardised terms of engagement should be put in place to assist management companies when instructing managing agents.

Annex A

Definitions

Common areas	The physical areas shared by all unit owners in an apartment block or housing estate. This could include lifts, corridors, stairways, gardens, internal roads and the roof of an apartment block for instance.
Commonhold	A form of estate ownership, in England and Wales, for blocks of apartments and other multi-unit developments.
Communal areas	See common areas
Communal services	Services shared by all unit owners in an apartment block or housing estate such as lifts and sewage works for instance.
Company constitution	The documents relating to the creation and running of a company.
Company limited by guarantee	A company in which the owners are referred to as members.
Company limited by shares	A company in which the owners hold shares and are called shareholders.
Conveyancing	The process by which property is bought and sold.
Covenant	An agreement between two or more persons where one agrees or promises to perform or give something to the other or agrees not to do certain things.
Developer	A firm or an individual or company who builds a multi-unit development.
Freehold	A form of ownership of land under which the owner owns it outright. The owner of a freehold is called the freeholder.
House rules	Rules for communal living in apartment blocks and housing developments which may cover issues such as noise, keeping pets, refuse disposal, parking etc.
Inhibition	An inhibition is a notice recorded on a Land Registry title which prevents the owner from dealing with the property, for instance selling the property, until certain conditions which are specified in the inhibition have been met.
Joint tenancy	Where two or more persons are entitled to property in such a way that they each hold undivided possession of it such that on the death of one of the owners the property passes to the surviving owner.

Leasehold title	Property held by way of lease is referred to as leasehold property. The lease will be for a period of time and leases of apartments of 999 years are not uncommon. The lease sets out the rights and responsibilities of the developer, the management company and the unit owner to each other. The person who grants the lease is called the lessor and the person who is granted the lease is called the lessee.
Leasehold Valuation Tribunal	A Tribunal in England and Wales which deals with disputes involving right to manage companies and other matters.
Lessee	The person who is granted a lease, usually the unit owner.
Lessor	The person who grants a lease, usually the developer.
Managing agent	A firm or an individual or company engaged by the developer or management company to oversee the maintenance and other services in housing or apartment developments.
Management company	A company set up to become the legal owner of the common areas and to manage and maintain these common areas in housing or apartment developments. The management company may be responsible for services such as lifts, corridors, stairways, gardens, internal roads and the roof of an apartment block for instance.
Multi-unit development	A multi-unit development is a building or group of buildings made up of multiple residential properties that share certain common areas.
Pre-contract enquiries	A set of questions asked by a purchaser from a vendor before the purchaser enters into a contract to buy property.
Quorate meeting	A meeting at which the minimum number of persons required by the organisation's rules to be present to make a decision is present at the meeting.
Service charge	This is a fee paid by unit owners to the management company. In return the management company provides services to look after and manage the common areas. It is a fee which can be due annually or every three or six months.

Sinking fund	A sinking fund is a term for the proportion of collected service charge monies which are put aside to cover significant investments that may be required to ensure the long term sustainability of the development in the future. This could include a fund to repair the roof for instance.
Snagging issues	Problems in a newly built house or apartment.
Struck off the Companies Register	A process whereby the Registrar of Companies removes a company from the Companies Register.
Tenants in common	Where two or more persons are entitled to property in such a way that they each have undivided possession of it such that they each can leave their interest in the property under their will or it will be dealt with under the laws of intestacy. It is the opposite of a joint tenancy.
Unit owner	The owner of an individual unit in a development. This could be a house or an apartment.

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