

we *are all* RESPONSIBLE



An owner's
guide to the
management
and
maintenance
of common
property



SCOTTISH EXECUTIVE

Making it work together

contents

part one: What does this guide cover?Page 1

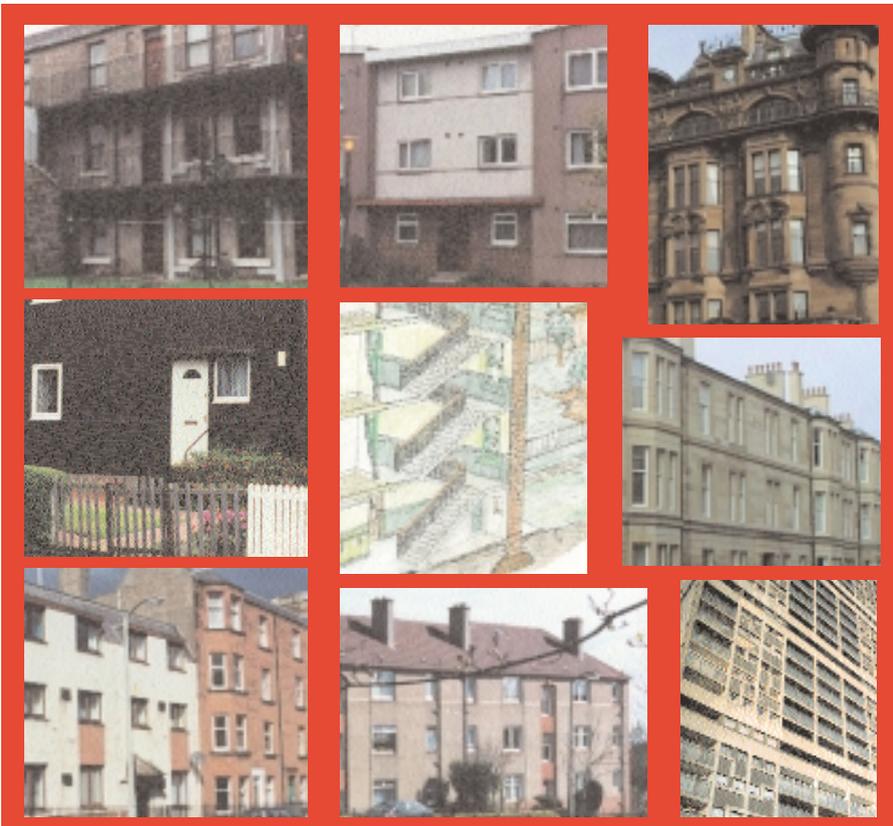
part two: What is meant by communal repair and maintenance responsibilities?Page 3

part three: What should owners do, and what should I expect from my neighbours?Page 7

part four: How do we organise the work?Page 13

part five: Who can help me sort my problem out?Page 21

Glossary:Page 30



part one

what does this guide cover?



If you have bought, or are thinking about buying a flat, it is important to bear in mind you will share the responsibility for managing and maintaining the building with your neighbours.

A flat is legally defined as being any property that is a 'separate and self contained set of premises, whether or not on the same floor, forming part of a building which is divided horizontally'.

A wide range of properties are, therefore, defined as being flats. These include not only traditional sandstone tenements, but also four-in-a-block housing, modern apartments, lofts and conversions. Each of these flat types may have mutual management and maintenance responsibilities. Certain terraces and semis, and even some detached properties in suburban housing estates, can share responsibility for the upkeep of common garden areas.

This guide has three aims:

- to provide you with advice on how to find out what exactly your repair and maintenance responsibilities are
- to inform you about the role that property managers can play in organising the necessary repair and maintenance work to your building
- to provide basic advice on how to resolve particular repair and maintenance problems when they arise.

This guide cannot provide you with a definitive statement about the legal arrangements that apply to your particular property.

That is a task for your solicitor. What it will do, however, is draw your attention to a variety of important matters that you and your neighbours should be aware of, to ensure full enjoyment of your home.

Once you have carefully read through this guide you will have a better understanding of the individual and communal responsibilities for property management and maintenance that may apply to you and your neighbours. It is important for you to be fully aware of these responsibilities prior to moving into your new flat. Too often owners only find out about such issues after they have moved in or when something goes wrong. This guide should help to stop this happening.



part two

What is meant by communal repair and maintenance responsibilities?



Within any block of flats there are common parts, such as the roof, stairs, garden area and external walls, which are typically the joint responsibility of all owners. Specific responsibilities will be defined in the title deeds for your property. Three aspects of the law of property govern the ownership, management, maintenance and use of such common property. These are either detailed in title deeds provisions for the property, or in the default provisions provided by the so-called 'law of the tenement'. The common law rules of 'common interest' also play a role. Any provision made in the title deeds takes precedence over the 'law of the tenement'.

TITLE DEEDS

The rules detailing the owners' responsibilities for the upkeep, management and maintenance of the common elements are almost invariably to be found in the property's title deeds. Title deeds define the physical extent of the property. They also specify the rights and responsibilities that pertain to that property. Title deeds may, as a result, make express provision for the ownership of these common parts. The deeds can also impose specific real burdens to regulate the on-going management and maintenance of the common property. The real burdens, servitudes and any conditions that apply to your flat set down such responsibilities.

Your property's title deeds may also include other deeds that have a direct bearing on the management of your property, the most common of which is the deed of conditions. Maintenance responsibilities may be detailed, along with any associated management arrangements, to ensure decisions are implemented. Within the deed of conditions provision can be made for the appointment of a property manager, or factor. Arrangements for ensuring the payment of such works and services can also be detailed.

Although the theory is sound, the practice is often less than satisfactory. While specific management arrangements can be included within the title deeds, this is far from universal practice. Generally speaking, the older the title deeds the less detail they contain. As a result, specified management arrangements are often partial and inadequate. Crucially, the titles may fail to prescribe a decision-making process that allows owners to come to a decision that is binding on them all. Owners may be obliged to maintain the common parts, but the title deeds may not allow for majority decision making. In such cases the law of the tenement provisions will apply. More modern title deeds usually allow for a comprehensive set of property management arrangements. It is advisable, therefore, to seek proper legal advice to establish exactly what your rights and responsibilities are in relation to these matters, preferably before you purchase a property.

The Land Register for Scotland will be operational in all counties of Scotland by April 2003. This means that when any property is sold all relevant information about rights and burdens affecting that property will require to be set out in the property's Land Certificate. The Land Certificate will contain a Title Plan; a Property Section, which describes the property and all rights that pertain to it; and a Burdens Section, detailing the burdens affecting the property in the same terms as they appear in the original deeds. The Land Certificate will also give details of the

current proprietor and any charges, such as a standard security, over the property. It will take some time for all property to be registered in the Land Register since property only falls to be registered when it is sold for the first time after a county becomes operational. The title to the property will until that time be recorded in the Register of Sasines. Enquiries regarding both registers should be directed to one of the customer service centres. Details are on page 33.

LAW OF THE TENEMENT

The law of the tenement provides a basic default position for all flats. Where the title deeds are silent on a particular issue, then the law of the tenement applies. The law of the tenement adopts the view that ownership within the building is individual, the only exception being the common close and stairs, which are the common property of those flats that obtain access by it. This means that top floor flats, under these common law arrangements, have the responsibility for maintaining their share of the roof immediately above their property, and ground floor flats the basement and solum area immediately below them. Differences in maintenance apportionment are said to be reflected in property value variations, with top flats being cheaper than other flats, given their likely higher liability for maintenance costs. This apportionment of responsibilities is considered to be unfair. Under the common law, given the pre-eminence of individual responsibility, there is no requirement for a common decision-making body.

The law of the tenement will shortly be reformed, creating a more comprehensive default system. Parts of the proposed reforms are to set in place a basic decision-making system to manage a newly defined set of common property parts. However, the default arrangements will only apply if your title deeds do not specify an adequate and workable set of management arrangements.

COMMON INTEREST

The law of common interest is designed to protect an individual's property. Each flat owner has a right of common interest in those parts of the building, even those they do not own, which provide either support or shelter to their property. Owners may carry out building works to their property, but these works must have regard to their duty of common interest to their neighbour's property. Removing an internal wall that is structural to the building would be a breach of these responsibilities. Common interest responsibilities will be fully incorporated into the proposed reforms of the law of the tenement.

Solicitors should advise prospective flat purchasers of their liability for set maintenance charges, if these exist, and their responsibility for any common property, prior to making a purchase. It is crucial you clearly understand the responsibilities and liabilities that transfer to you with the purchase of a particular property. If the property is professionally managed your solicitor can request information about common maintenance obligations and their associated costs that might help you decide whether this is indeed the home for you.



part three



What should owners do, *and what should I expect from my neighbours?*

Ensuring the common parts of your building are properly maintained demands collective decision-making. Owners need to fully participate in the decisions necessary to ensure on-going repair and maintenance work. They then need to agree the best course of action to remedy any problems. Once a decision has been agreed, the next task is to ensure the work is carried out. This can either be the responsibility of certain individuals within the block, who agree to organise any work that needs to be carried out, or the responsibility of a property manager employed by that block. It should be noted that for owners who have exercised their Right to Buy, buying their flat from either a council or housing association, your old landlord may still have responsibility for managing the block. This section details the best means of ensuring such regular building maintenance work gets carried out.

TALKING TO YOUR NEIGHBOURS

Good communication is essential to achieving good management of your block. Communication must be effective between neighbours in order to come to a decision, and between the owners and a property manager, to ensure these decisions are acted on.

You will need to communicate regularly with all your neighbours on common property maintenance matters. While it is possible to do this by email, letter or through individual contact, most people prefer to participate in meetings called to deal with such matters. These meetings can be formal, with an agreed set of rules and decisions recorded in writing. Or they may be more relaxed, with the business preceding a social event. Whatever the style a clear record of all decisions is essential. Such meetings make an appropriate forum to consider the property manager's views about

what common matters require attention. The creation of an owners' association can help generate a real sense of community between neighbours and help the property manager function more effectively on your behalf.

COMMUNICATING WITH YOUR PROPERTY MANAGER

Having come to a decision about what common maintenance works are required, you need to give clear instructions to the property manager. It is helpful if one nominated person communicates directly with the property manager, if there is one. You should also have an arrangement in place to notify the property manager when any communal defect comes to the attention of owners. Similarly, when there is evidence of unsatisfactory repair work, or a poor service being provided by suppliers, you will need to inform the property manager and seek to have the situation remedied. As an individual owner it is also helpful to notify the property manager if you sell your property so that they can contact the new owners.

ENSURING BETTER COMMUNICATION

To ensure good communications with owners at all times property managers are normally willing to meet regularly with owners either as a group, or individually where necessary. Having an owners' association can clearly be very helpful in this regard. Property managers have experience in dealing with owners' associations and can often help form such organisations, as well as assisting with their day-to-day administration. Given their professional expertise they are often called upon to provide advice on maintenance work, essential repairs and improvements to common property. They are also expected to attend to any routine enquiries from owners, solicitors and any other professionals with an interest in the property.

PAYING FOR PROPERTY MANAGEMENT SERVICES

As property managers charge for their services it is important to ensure they are paid on time, to help maintain good working relations. You will probably be asked to pay a float when you first move in, ensuring your property manager has sufficient funds to meet on-going costs. Regular payments into a maintenance or sinking fund may also be required.

MAKING THE GRADE

Private property managers adhere to a professional code of practice that is set down by their representative body, the Property Managers Association Scotland Ltd. Currently, all housing associations which operate a property management service are required to meet specified standards. Similar standards will also apply to all local authorities in the near future. Both housing associations and local authorities also operate specific customer care policies that set down service delivery expectations and what redress can be expected if they fail to meet these standards. The basic duties of a property manager are outlined below.

WHAT SHOULD I EXPECT OF MY PROPERTY MANAGER?

Property managers, in taking responsibility for the administration of common maintenance work and repairs, should provide some or all of the following services. The actual details of the service provided will vary, depending on what the owners want and are willing to pay.

ORGANISING MAINTENANCE

Property managers may arrange for an annual property inspection, and then take appropriate follow-up action to resolve any problems highlighted by this inspection. In taking forward the follow-up work the property manager must organise and manage reliable and capable building maintenance contractors. This may entail co-ordinating the services of several building trades. Where such work is outwith the routine maintenance contract they have with owners, the property manager will obtain estimates for this work from reputable contractors, and then advise the owners of these costs. When the majority of owners agree, the property manager will normally instruct the work to start. In such cases the contractor will expect the property manager to hold the funds for the work. Each owner would, therefore, be asked to lodge his or her share of the projected costs with the property manager, before any work commenced. Managers would investigate any complaints by owners of unsatisfactory work on the part of contractors, and report back to the owners.

ARRANGING PAYMENT

Once the work has been carried out the property manager, on the owners' behalf, checks the contractor's or service supplier's invoices and once approved, bills each owner individually. Managers collect all common charges and report on arrears to the co-owners, or the owners' association. It is important that property managers maintain accurate records on all work carried out to your property.



ADDITIONAL SERVICES

While the above indicates the key tasks you can expect of a property manager, these tasks can be extended, if the owners are in agreement, for a slightly larger fee. For example, property managers often organise and administer block insurance policies on behalf of owners. They can also manage maintenance contracts for lifts, boilers and gardening services on behalf of owners, or directly employ and supervise on-site staff such as caretakers.

CAN WE MANAGE THE BLOCK OURSELVES?

There is no reason why, as a group of owners, you cannot take over the management of your block, but clearly there is a lot to consider and think about. Title deeds often specify that the property be managed, but it is rare for a specific manager to be named. An owners' association, acting as a property manager, would meet that requirement.

In this case the services of any existing manager would probably have to be terminated. Most deeds allow for this, via a majority decision by all affected owners. Some deeds will demand a unanimous decision. The property manager's contract may also specify a period of notice.

With Right to Buy property it is common for title deeds to allow the local authority to retain the right to manage the property, as long as they have one flat in their ownership within the block. Where the local authority has no remaining ownership interest, owners can make alternative management arrangements.

In order for the block to be self-managed it is advisable to form an owners' association. This would involve drawing up an agreement involving all your neighbours, detailing not only how the building should be managed, but also how these tasks should be organised. Previous comments about how to call, manage and record decisions made at owners' meetings apply here, as does the need to ensure prompt payment of the management fee.

There is a considerable amount of work involved in managing any property. Anyone taking responsibility for running the association must be sure all matters are properly administered. Organising meetings, recording all decisions and keeping all owners properly informed takes time. These tasks become more laborious when it becomes necessary to organise a major piece of common repair work, such as re-roofing. There can be problems when neighbours do not pay their share of costs and have to be chased for payment. Taking responsibility becomes a much harder task when things go wrong. Being blamed by your neighbours for employing a poor contractor can be personally difficult. That said, many successful self-management arrangements work well for the people involved. Such arrangements can enhance the overall quality of flat living.





How do we Organise the work?

Typical property management situations can include basic day-to-day domestic management issues, the organisation of on-going property maintenance and taking responsibility for carrying out major repair works. These are discussed below.

DOMESTIC DAY-TO-DAY TASKS

Some domestic tasks require proper management. While a property manager could take responsibility, in most cases responsibility rests with the owners. Having an owners' association can help here by agreeing a set of rules that all residents should abide by.

Take the contentious issue of stair cleaning, which in tenement flats can cause a great deal of irritation amongst owners. Traditionally the common stairs were cleaned on a rota basis, with each of the owners in the block taking a turn. Where this arrangement breaks down, depending on local by-laws you can invoke certain sanctions against non-participating parties. Often the threat of action is sufficient to resolve matters. Many owners nowadays buy in cleaning services, with each owner agreeing and paying their share of the cost. In modern private flats cleaning of the entrance area, stairway and landings would typically be part of the standard service provided by the property manager.

Other tasks that require a degree of communal agreement include ensuring the backcourt, back green or common garden area is properly maintained. Again, who does what and who pays, needs to be agreed. Flats with communal door entry systems installed must maintain them. The same goes for the installation of communal TV aerials, although they require little or no

maintenance and have the added benefit of reducing tile damage caused by people walking on the roof. Maintenance of stair lighting is another service that may require specific management arrangements.

While property managers can provide such services, in the main these tasks depend on owners taking responsibility. In larger modern flatted developments a high level of service can be provided within the management fee. Caretakers, wardens, or concierge management are becoming more common, though these can be costly options for individual owners.

REGULAR PROPERTY MAINTENANCE AND MAJOR REPAIRS

Having your building regularly inspected, and then acting quickly to resolve any of the problems highlighted is the key to successful property maintenance. If problems are left unresolved major cost issues can arise. It is important to know what to look out for, so that you can inform your neighbours, obtain agreement, and have the necessary work instructed either directly or through a property manager.

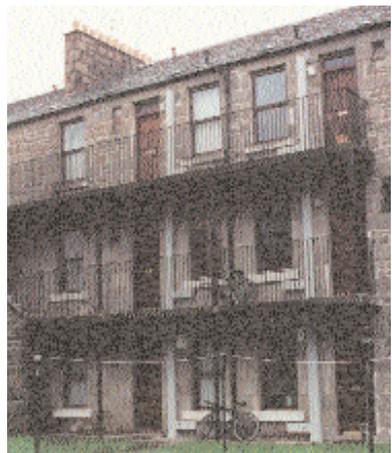
Most importantly it is vital to ensure that your building remains watertight. Gutters and downpipes allow rainwater to be channelled safely away from the building. If a gutter or downpipe becomes blocked water will overflow into the building fabric, leading to timber rot and physical deterioration of the walls. This is very expensive to repair.

It is also essential that you have your gutters and downpipes checked annually. If they are made of cast iron try and have them painted every five years as a protection against corrosion. This should be part of an inspection and painting cycle that has been agreed with your neighbours. Such work can be instructed directly, or through a property manager. Given the heights involved roof inspections should only be carried out by qualified tradesmen.

Ensure when such inspections are carried out that the roof covering and any metal or lead flashings are properly checked for wear and tear or damage. Also ensure that any metal ridging or lead flashing is intact. Chimney heads in particular can also cause problems because the lead flashings around them can break down and make the structure unstable.

Windows are another vulnerable area and should be part of a regular inspection. Where windows are not painted, the putty, window bead, bottom rail and window sill will start to rot. Where a sill is poorly pointed, or a replacement window is a poor fit, water can sometimes get in under the window and result in rot to adjacent floor joists. Again regular painting and mastic pointing is a good protective measure. Organising this collectively is good practice, but as windows are not common property this is not always possible. Individual owners should be encouraged to check their windows and ensure they are regularly painted.

At ground level, it is again important to ensure that water is directed away from the building. All drains and gulleys must be kept clear. You may also need to check out your basement to be sure that the drains are functioning properly. In most cases, the ground floor property will have a timber floor lying above the basement space, or solum. Small vents in the wall ensure that air can circulate through the solum, preventing the damp conditions that produce timber decay. It is important to ensure these vents are kept clear. Again this can be a specified part of a regular inspection, but it is also important to check these elements yourself.



Common Elements

Chimney stacks. But may be mutual with next close.

Chimney vents or flues. Items such as dropping a flue liner to allow a gas fire to be installed are individual but the structure of the flues should be common.

Roof. Includes flashings, ridges, roof covering and access rooflights.

Mutual gable walls. These are owned in common with the next-door close. All owners in your close and all owners in the next-door close should pay for repairs to these walls.

Gutters.

Downpipes.

Common stairs and access doors into and out of close.

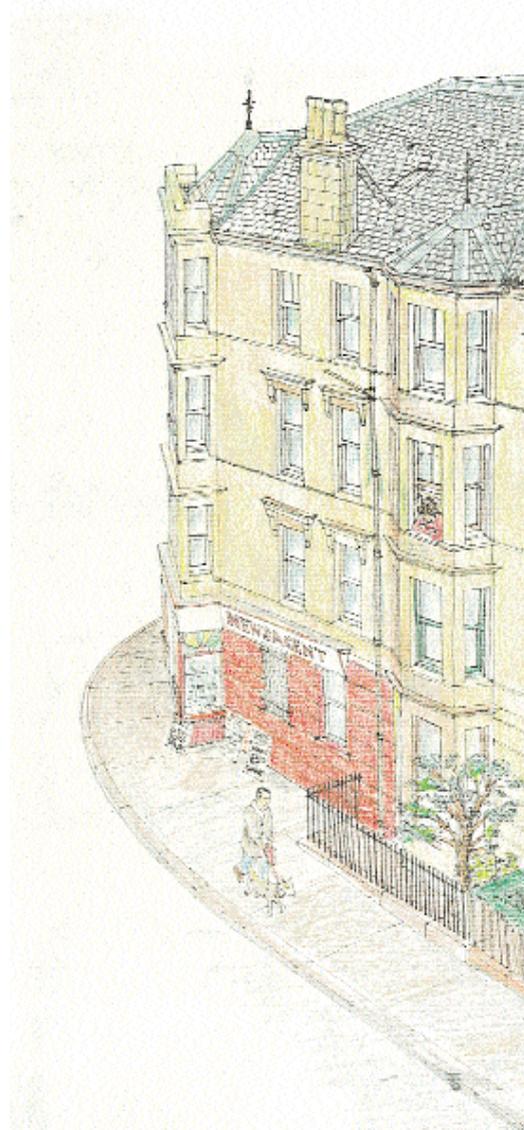


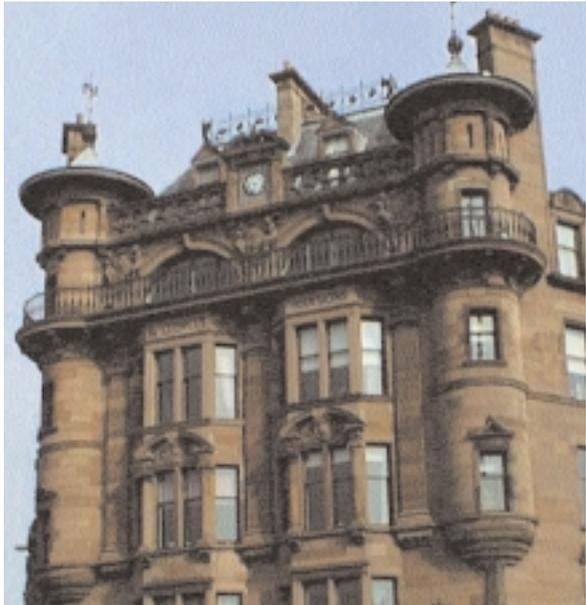


Diagram courtesy of The Tenement Handbook

MAJOR REPAIRS

There are occasions when you will need to get a major piece of work carried out on your building. It is, therefore, useful to understand how major work will be dealt with. For a major repair, you would well be advised to appoint either an architect or surveyor to specify the work and manage the building contract. The key point here is that unless you describe in detail the work that needs to be done, obtaining comparative costs from different building contractors will be very difficult. Taking responsibility for work on this scale is a major undertaking.

Roofs are a good example. Before you do anything make sure that replacing the roof covering is the solution you need. A good slate roof, for example, should last for 100 years, provided it is well maintained. The nails will generally rust long before the slates decay. However, if you approach certain contractors they may suggest the entire roof needs to be replaced. Professional advice from your property manager, a surveyor or architect is well worth getting.



There are other key decisions you and your neighbours will need to make. What type of roofing material should be

used? A good slate roof has a much longer lifespan than tiles. Tiles, being both larger and capable of being laid by unskilled labour, tend to be cheaper, but if replacing slate with tile the roof structure may not take the additional weight. If you live in a listed building, or within a conservation area, then your local planning department will advise you about any conservation requirements. It may be that only a certain type of slate can be used.

If you are re-slatting, always make an allowance for renewing some, or all, of the roof lining as old boards will not hold the nails. A good underfelt can also provide additional rain water protection. Also allow for the renewal of lead flashings. Never skimp on these joints, as they need to last at least as long as the roof covering. When front gutters are renewed, if they are laid on the wall, be sure an undercloak flashing is placed under the gutter. This will reduce the possibility of water penetrating into the wallhead if the gutter overflows. Again, this reduces the possibility of rot. If the top floors are well insulated, you will also need to make sure that the loft space is well ventilated to prevent condensation. This may require the insertion of additional ventilation tiles. Finally, if the property is three storeys or more, it is advisable to have stainless steel roof anchors fitted to the ridges. This will make it safer for any tradesman who is carrying out maintenance on the roof.

Regular periodic inspections quickly followed up by remedial action will reduce the costs of minor and major repairs. Delaying remedial work will only exacerbate a problem and increase the cost of the eventual repair work. All owners have a role to play, by keeping an eye out for problems and reporting them quickly when they arise to the owners' association, the property manager or a tradesman. You and your neighbours can quickly get to know what is going on in your building. It is the property manager's job

to quickly and competently carry out your instructions. But remember, you and your neighbours are in charge. While arrangements can differ in a local authority or housing association context, it is important always to keep good communication channels open. Bear in mind a well maintained flat will always command a better price.





Who can help me sort my problem out?

Accessing appropriate technical advice depends on the question you are asking. Most advisors will not directly provide the detailed information you require, but should be able to put you in touch with the people who can.

TECHNICAL ADVICE: WHAT CAN YOU EXPECT?

It is important to understand that technical advice rarely comes free. Both the Royal Incorporation of Architects in Scotland and the Royal Incorporation of Chartered Surveyors will provide only basic information and advice. They will, however, put you in touch with appropriate member companies who can offer specialist technical expertise at a price. Similarly, the Property Managers Association Scotland Ltd can advise you on how to proceed with appointing a manager and then put you in touch with companies capable of dealing with your specific request. There are a number of technical and professional people that you can call on for help. The scale and nature of the required work will influence your choice of consultant. Here are some useful technical requests you might make.

I want a full technical inspection of the common parts of my Victorian sandstone tenement. The report needs to advise me of the condition of the different building elements, what needs to be done to rectify any disrepair and make recommendations for future maintenance.

In this case an architect or building surveyor should be able to provide you with the required survey and report. Not all architects or surveyors carry out this type of work, so you need to ask for

someone who has relevant experience. The roof must be inspected from roof level, in order to check the condition of slating, tiling, leadwork, gutters, cupolas, dormers and the chimneyheads. Surveyors will require access to the loft space as this area is vulnerable to rot if the gutters have been blocked or overflowed.

You should ask the surveyor to produce a diagrammatic layout of the roof that clearly locates any defects. All external walls need to be inspected. If there are significant areas of stone disrepair, an elevational drawing should clearly detail this disrepair. Such documents will greatly assist tradesmen when carrying out the work, and help in providing accurate cost information. A lot of valuable information can be obtained here simply by using binoculars from ground level. The condition of gutters and downpipes should also be recorded. Where cracking or movement is evident, the architect or surveyor may request that a structural engineer be appointed to investigate this matter in greater detail. The close and stair should also be checked for wear. If there is a basement, it must be surveyed to check if there are signs of rising dampness, leaking drainage pipes, faulty wiring or general structural problems.

Such a comprehensive survey can take anything between four and eight hours to complete. Add the time taken to write up the report, and at the time of writing you can expect to pay anything between £500 and £800, depending on the size of your building and scope of the inspection. It is a good idea to ask that photographs be provided in the report to highlight any problems. This will greatly aid understanding for everyone with an interest in this report, whether owners or contractors.

I want a survey of the common parts and estimates for putting any problems right.

Some architects and surveyors may be prepared to give rough estimates for work, based on their past experience. However for any estimate to be accurate it is advisable to approach a quantity surveyor to prepare an elemental cost breakdown of the envisaged work. The information required to provide such a costing is often more than that provided by the basic structural survey described above.

Once you have the initial survey report, you will have a clear idea of the scale of the work required and the best way to organise it. If the only problem is a defective gutter, then you can simply contact your property manager, or ask the architect or surveyor for a specification prior to seeking quotes on behalf of the other owners. If the work is more extensive, then you should ask the architect or surveyor for a written quotation to act as your consultant for the work. Depending on the size of the contract the fee charged will either be a percentage of the contract value, or calculated on a time basis.

I believe that the repair work will be quite extensive. Can the property manager handle it, or should we employ other consultants?

This decision will depend on the experience of your property manager as well as the scope of the works involved. Large repair contracts demand a high level of co-ordination among a number of professionals. A roof renewal could, on occasion, demand the combined services of architects, engineers and quantity surveyors, as well as Clerks of Works. A property manager often handles such technical co-ordination, but owners could decide to appoint an architect to carry out this task.

Architects are experienced in preparing specifications and details for a builder to work to. Quantity surveyors are employed to prepare Bills of Quantities from the architect's drawings, using a prescribed system of measuring and costing the intended work. This makes it relatively easy to compare the tender prices from different builders. If builders are asked for estimates based solely on a loose specification, they will each interpret the work required in different ways. The costs and quality of envisaged work will, as a result, vary considerably making any comparison between quotations difficult. Finally, the Clerk of Works is employed to ensure the building works meets the specification laid down by the architects on your behalf. On large works it is essential to have proper project management skills.

I live in a listed building and want a report that can be used to apply for grant aid from Historic Scotland and other Conservation Trusts.

Owners of listed buildings have to tread carefully. Depending on the listing status, you may receive grant aid towards the repairs, but the specification for the repair will always have to be of a high standard, in keeping with the quality of your building. You should choose someone who has direct conservation experience, probably a specialist architect. The level of information required varies depending on the scope of the works.

I live in a four-in-a-block flatted terrace. There are three owners and one Council property. The roof and common fabric are in common ownership.

More often than not responsibility for managing and maintaining the common parts will remain with the local authority. They will normally provide a property management service and collect payment for that service in the same way as a factor. Similar

arrangements apply if the property is managed by a housing association. There can be advantages in this, given local authorities and housing associations often employ a Clerk of Works to inspect and manage their maintenance work, and they may also employ their own tradesmen. If there is no manager then you will need to organise the required maintenance work with your neighbours and the local authority or housing association. Everyone's involvement and agreement will be required to pursue any repair work.

A common repair survey for this type of building should only take a couple of hours, so the cost of the survey and a report would be between £250 and £300. Most building surveyors would be able to do this work.

FINANCIAL ADVICE: WHAT CAN YOU EXPECT?

Advice on financial matters comes from two main sources, either your local authority in relation to improvement and repair grants, or your mortgage provider in regard to securing an additional loan or extending the current one on your property. Such advice is generally free. You may need to answer the following questions.

How can I find out about repair grant availability?

Having just discovered that major repair work is needed on your property you might want to check whether you would be eligible for a repair grant. The approach adopted by each local authority will differ, so you will need to contact your local authority directly. It is worth noting, however, that the availability of these grants is limited. Owners now generally bear the financial responsibility for the repair and up-keep of their property.

If you live in either a listed building, or a conservation area you may be entitled to a Historic Scotland Grant; what used to be

called a Listed Building Grant. Only A listed buildings get automatic grants, but B and C listing on occasions can receive an award. Two area focused initiatives operate, one in Edinburgh's New Town and the other in Glasgow's West End. The respective conservation trusts operate special grant arrangements.

Once I know what my contribution to the works will be, how do I secure the necessary funding?

Unless you have the resources to hand, you will either need to extend your current loan arrangement or take out an additional loan from your bank or building society. Both the extended or additional loan will be secured against the value of your house. While this may, at first sight, seem an attractive option, given the ease with which you can access significant sums of money, it is important to realise you are either extending your mortgage or taking out a new mortgage. All loans must be repaid with interest and the lender will demand security over your home. This means that your home can be sold to re-coup the loan, should you fail to make the payments. Local authority trading standards officers can offer advice. Independent financial advisers can also offer assistance, but there is likely to be a charge.

Is there any other way of funding this type of major repair?

The most obvious solution is to establish a sinking fund for your building, to which all owners make a monthly contribution. Your property manager can administer such funds. When a major piece of work arises, there should then be enough money to pay for it, or at least significantly reduce the size of your individual contribution. Such arrangements should be seen as being a sensible precaution. There is, however, a difference of opinion whether such funds lie with the property or are individual to each owner. Typically, sinking fund contributions are taken to be individual.

LEGAL SUPPORT: WHAT CAN YOU EXPECT?

On occasion problems arise in getting owners to agree to work being carried out on the building. Where mutual agreement cannot be achieved it may be necessary to instigate statutory or legal action to make everyone pay their share of common costs.

What type of statutory action can be taken?

If your building is causing a danger to the public the Building Control Department of the local authority can serve what is called a Section 13 Notice on all the affected owners. This obliges all owners to rectify the problem within a specified period. Grant assistance can be offered. If the work is not carried out within the specified period the local authority can instruct contractors to carry it out on their behalf and charge the owners the associated costs, including a local authority administrative charge.

A local authority can also serve statutory notices on dwellings which are in a poor state of repair. They could choose to serve a notice on the property under Section 87 of the Civic Government (Scotland) Act, 1982, or under Section 108 of the Housing (Scotland) Act, 1987. Service of either statutory notice require the owners of the property to carry out the works specified by the notice within a defined time period. If the owners choose to take no action the local authority can then undertake the works themselves and recover all associated costs from the owners. In certain instances owners may be eligible for grant assistance. Similar provisions can be found in certain local acts. Edinburgh residents, for example, can be required to carry out repair works under the City of Edinburgh District Council Act, 1992.

Are there other mechanisms open to owners who want to tackle a non-participating owner?

Seek legal advice on what is stated in your title deed. The title deed may specify how such matters should be resolved. Remember when buying your property it is essential you get your solicitor to fully explain your title documents to ensure problems like this can be overcome. You will have to pay for proper legal advice.

Your solicitor can also act on your behalf by writing to the other owners, or one particular owner, pointing out their obligations under the title deeds. This can often be enough to resolve a particular matter. Going to court to enforce title conditions with your neighbours is very much a last resort. Such enforcement can be slow, tedious and expensive given the pace of the legal process and the associated costs of being represented. Certain insurance policies may assist in the costs of pursuing such a claim. It is possible to get a Court Order to recover your costs from the other owners, but actually receiving this award is not always guaranteed.

Overall, it is worth trying to avoid court action as it can be expensive, and there is no guarantee of a result. Better to ensure the title deeds provide that the property can be properly maintained before you decide to purchase.

ACCESSING INFORMATION

Before seeking specific technical advice it is often necessary to get guidance. In such cases the Citizens Advice Bureau tends to be the first port of call. The information and advice provided here depends on the specialist knowledge of the particular adviser. They should, however, be able to refer you to another body who can help. Local authorities are another resource for basic information, such as the use of statutory notices and improvement

grant availability; they are less knowledgeable about other specialist areas. Local authority information tends to be general and specific to the locale. Shelter, the homeless charity, also offers advice on housing matters through its local housing advice network.

Older people can access specialist help on common housing matters via Age Concern's Housing Advisory Service, INNIS. Older people can also get advice on property maintenance and repair from Care and Repair projects.

Solicitors also offer advice on such matters, but this will cost money. Again, there will be marked differences in the knowledge base and expertise in these matters. Finally, another source of information and advice is to ask friends and neighbours. Often having had to deal with common ownership matters previously they are well placed to help, not least at avoiding the pitfalls.



THE INFORMATION PROVIDED IN THIS LEAFLET SHOULD HAVE GIVEN YOU A BETTER UNDERSTANDING OF YOUR SHARED REPAIR AND MAINTENANCE RESPONSIBILITIES AND HOW BEST TO ORGANISE THIS WORK. THE EXAMPLES PROVIDED WILL ASSIST YOU IN YOUR OWN COLLECTIVE DECISION-MAKING. KNOWING YOUR RESPONSIBILITIES AND SEEKING APPROPRIATE ADVICE ARE THE KEYS TO AVOIDING PROBLEMS IN THE FUTURE.

Glossary

Backcourt	West of Scotland term for tenements' common back garden, typically with bin stores for domestic rubbish.
Back green	East Coast term for tenements' common back garden, but bin stores are less common.
Block insurance	A common building insurance policy that provides cover for the entire block in which your flat is located.
Burden	An obligation which runs with the ownership of the property, the details of which are found in the title deed. (See title deed)
Close	West Coast term for the common stair within a tenement or flatted property. (See stair)
Common interest	Is a legal principle that is designed to allow individual owners, within a block of flats to carry out works to their own property, but that in doing so they must ensure these works do not infringe their duty to provide either support and shelter to their neighbours' property. Removing an internal load-bearing wall would breach such an obligation.
Common property	Building parts which are the common property of all the proprietors in the building, in equal shares. Title deeds typically define the solum, the common passage and stair [which is common property under common law], the roof (but not the roof space), rhones and downpipes and the back green or backcourt.

Common law	(see Law of the Tenement)
Common stair	The internal or external stairs which are used to access the individual flats within a block.
Deed of Conditions	A deed which can be used to set out the burdens and conditions, including sometimes management arrangements, affecting a block of flats, instead of these provisions being inserted into the original titles of the individual flats. These documents can also regulate common ground areas in residential housing estates (See title deed)
Factor	Originally the term referred to a landlord's agent or steward, but is now taken to be a property manager.
Feu Duty	An annual payment made to the original owner of the land on which your property was built. This will shortly disappear with the imminent abolition of feudal land ownership under the Feudal Act. Compensation will be payable to the former feu superior, however, if demanded on the same basis of feu redemption.
Flashing	Strip of lead that covers and protects the area between the roof and an upright wall.
Flat	Is defined under the Housing (Scotland) Act, 1987 as being any property which is a <i>'separate and self contained set of premises, whether or not on the same floor, forming part of a building which is divided horizontally'</i> .

Float	A small amount of cash that is paid in advance of works or services to allow a property manager to get these matters initiated.
Gulley	A street level drain.
Ground Burdens	(see Feu Duty)
Land Register	New system for registering property ownership in Scotland, which replaces the previous Register of Sasines.
Law of the Tenement	Common law arrangements that apply to tenement properties where the title deed does not detail how to deal with a particular management matter.
Sinking Fund	A fund generated through regular monthly payments, which is designed to finance major building works in the future, thus off-setting the need for a large one-off payment.
Solum	Scots building term for the bare earth area located immediately below the building.
Stair	East Coast term for the common stair within a tenement property. (See close)
Title Deed	Legal document which sets out the burdens and conditions affecting that particular property. (Also see Deed of Conditions)

Registers of Scotland Executive Agency is responsible for maintaining Scotland's two national property registers – the Register of Sasines and the Land Register. Information on ownership of specific properties is available at a current cost of £2 (Register of Sasines) and £4 (Land Register) per property. Further information can be obtained from the Customer Service Centres in Edinburgh and Glasgow, details of which are:

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

Glasgow Customer Service Centre, 9 George Square,
Glasgow G2 1DY.

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- This guide is designed to provide home owners who share repair and maintenance responsibilities for their property with neighbours with:
 - advice on how to find out what exactly your repair and maintenance responsibilities are
 - information about the role played by property managers in organising the necessary repair and maintenance work
 - basic advice about how to resolve particular repair and maintenance problems when they arise.

Practical examples are provided to illustrate the best way to organise the necessary management and maintenance tasks that are part and parcel of this type of home ownership arrangement.

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