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Property Management Companies and You





This booklet is based on information provided by DKM Consultants
in association with Kevin O'Higgins Solicitors



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Introduction

The value of your property and your quality of life are affected by how well your property is managed.

We hope this booklet will make it clear to you, the consumer, how property is managed in Ireland and how to make sure that your property is well managed.

When you buy an apartment you become a member of a 'property management company'. This brings rights and responsibilities that all owners need to understand. Apartment owners are in charge of how their apartment complex is maintained.



An effective property management company will keep service charges at a reasonable level. It will also secure the long-term future of the apartment complex by providing for all future needs.

This booklet is a simple guide for anyone who is thinking of buying or has bought an apartment. It is also for anyone who lives in a housing estate where there is a management company in operation.

However, this booklet is only a guide and you should check any issues it raises with a solicitor.

Buying an apartment: what you need to know

More than half the new housing units built in Dublin in 2005 were apartments.

Why is buying an apartment different to buying a house?

Buying an apartment is not the same in legal terms as buying a house. You cannot own your apartment outright, or hold the 'freehold', as you might own a house. This is because your apartment is part of a development, sharing common areas – halls, gardens and parking, for example – with other apartments.

When you buy an apartment, you automatically become a member of a 'management company'.

This company owns the entire development. As a member of that company, you have a 'leasehold' on the apartment that you have bought. This leasehold is generally a very long lease (perhaps as long as 999 years), which you can sell to a new owner, or leave in your will.

What is a property management company?

A property management company is made up of all the owners of apartments in a development. It is legally responsible for maintaining the standard of the development. This means that you, and the other owners in the apartment development, are responsible for the upkeep of the apartments and of all the common areas.

Like all companies, the management company must stick to rules detailed in its 'Memorandum and Articles of Association'. You should be given a copy of this when you buy your apartment.

How does a management company work?

A management company is responsible for the running of the apartment block. It is vital to know who the members of the company are and what your rights and responsibilities are.

Are property management companies regulated?

No, property management companies are not regulated.

However, the Government plans to introduce a law to set up a national property services regulatory authority in late 2007.

What are the duties of the management company?

The main duty of the management company is to maintain the apartment complex. It must decide on an annual budget to pay for the cost of this maintenance. This budget is met by a service charge paid by all members.

The management company must decide what services it will provide, for example cleaning or employing a management agent. The management company will use the money it gets from members to budget for things like:

- » ongoing maintenance;
- » future painting or re-carpeting; and
- » a 'sinking fund', for longer term or unforeseen expenses.



What is the difference between a management company and a management agent?

The management company will usually employ a 'management agent' to help run the complex.

The management agent will be expected to:

- » keep the accounts;
 - » sort out problems relating to the common areas;
 - » send out bills; and
 - » make sure that all bills are paid.
- » However, the management company that you are a member of is ultimately responsible for maintaining your complex – not the agent.

As a member of the management company what will I have to do?

When you buy an apartment you become a member of the management company. Each member of the management company must pay their service charge every year. This will be used to maintain the apartment complex.



You will be invited to attend an Annual General Meeting (AGM) of the management company. At the AGM some members must agree to serve on the board of the company. This board will make the decisions for that year about the upkeep of the complex.

Should I get involved on the board of the management company?

All owners in a development should take part in their management company. This will help to make sure it is well-run and works well to protect the value of their investments.

If you do not get involved, you will have to hope that there will always be a committed group of volunteers to maintain standards for you.

Whether or not you are on the board, once you buy an apartment, you are a member of the management company and you share the responsibility for how that company acts.

What do property 'management agents' do?

The day-to-day running of most apartment complexes is done by 'management agents'. Finding a good one is crucial to successfully maintaining a development.

What is a property management agent?

The owners of the apartments in a complex, in their role as members of a 'property management company', usually employ a 'property management agent' to manage the complex.

This property management agent must then carry out the duties stated in their contract with the property management company. It is crucial to employ a suitable agent.

The amount of money you have to pay for your annual service charge is affected by how competent and competitive the agent's service is.

The quality of the agent's service is also vital to the long-term value of your apartment because it means the complex is maintained to a high standard.

How do I decide what I want from my property management agent?

You must be clear what tasks you want the agent to carry out.

For large apartment complexes, you may need to pay a surveyor experienced in property management to suggest a formal list of duties for the agent.

If your management company is taking over responsibility for the complex for the first time, you should arrange a survey of the complex. This will help you to assess what repairs, maintenance or improvements may be needed in the future.

You can do this before you appoint an agent or this can be one of the jobs that the agent does for you.

How do I get the best from my agent?

Right from the beginning it is important to make sure the development is well managed. When you employ an agent:

- » make sure at the outset to establish what their responsibilities will be;
- » be clear about the standard of work you expect;
- » detail how quickly they must respond; and
- » set deadlines for when they should complete tasks.

It works best if the agent goes to the meetings of the board of the management company and gives their reports at these meetings.

It is a good idea to treat your agent as a general manager. This way they can help you to decide policy for your apartment building and be responsible for day-to-day affairs. Meetings should be properly organised and any decisions should be clearly set down in the minutes.



The board of the management company should decide who will be responsible for communicating with the agent. The members of the board should jointly agree what they want the agent to do. They should then give the agent clear instructions. Individual members must never give the agent different instructions to those decided by the group.

How should the management agent deal with the day-to-day issues affecting apartment owners?

The board of the management company should decide how the agent responds to problems from individual residents. The board is then accountable for how the agent responds. The board should tell residents:

- » who the agent is;
- » what their duties are; and
- » the limits of the agent's authority.

Although the agent works for the residents as a whole, the board employs them. Residents must be clear that the agent has the authority and support of the board to carry out their role.

Why must my agent have insurance?

Even where a management company asks the agent to do things for them, the company is still legally responsible for any neglect, omission or mistake by the agent. This means they must be sure that the agent is able to pay for compensation or damages.

Before you hire an agent you must make sure that they have 'professional indemnity insurance'. If the agent is a member of a professional or trade association, the association may require them to have professional indemnity insurance. However, you still need to check that the cover exists and what it includes.



What qualifications must property management agents have?

There are no specific qualifications for property management agents, but this may change after the national property services regulatory authority is set up.

Should we keep on the agent that the developer employed before handing us over the property?

You need to find out how good the agent employed by the developer was. Get answers to these questions.

- » Was the agent efficient at dealing with complaints?
- » Did the agent act promptly to deal with minor repairs?
- » Did the agent behave reasonably when you had problems – even though they were answerable to the developer?

What do we do if we are not happy with our management agent?

If the management company that the owners are members of is not happy with the management agent that is looking after the complex, it can appoint a new agent. The management company must obey all legal requirements, including those set down in the contract with the management agent, and go through a proper tendering process.

At the end of this booklet there is a list of key questions that management companies can ask when they are looking for the most suitable agent.

Owners and developers

People buying apartments should know that developers can attempt to keep control of the property management company even after the development has been completed.

Do owners always control the property management company?

No. Many developers keep control of apartment complexes even after they are effectively completed. They do this by retaining title on part of the property, which means they still own part of it because they have not released it for sale. They also keep control by controlling the management company voting arrangements at the AGM.

It is important that your solicitor examines the wording in the Memorandum and Articles of Association that relates to how votes are distributed at the AGM. This is especially true if you are considering buying off the plans.

How long will the developer be involved in the property management company?

At present there is no time limit on when the development is handed over to residents. Even after the apartment complex is completed, the developer need not give up control.

In addition to keeping control of the management company, the title to the land surrounding apartment blocks is often still in the hands of the developer. The developer may choose to keep the title to these lands because they hope to get planning permission for more houses or apartments.



Things to check before buying an apartment

There are basic things that all potential buyers must check before buying an apartment.

What should I look for when I first go to see the property?

The larger the common areas are, the more it can cost to maintain them. It is important that the following are well

maintained:

- » the entire building;
- » the grounds;
- » the waste collection point;
- » the entrance gate; and
- » footpaths.

Visit at night to check the lighting. Look out for features like ponds, fountains and extensive wood, which are expensive to maintain.

Ask about the rules on using common areas such as gardens and courtyards. Find out who can use what and when.

Confirm the location of your parking space, as disputes may arise over cars parked in the 'wrong' spaces.

You should know that the owners of the apartments will have to pay for the maintenance of common areas inside the building and in the grounds. If these are designed to a very high standard they can add to the cost and this will be reflected in high service charges.

It is important to get professional advice such as a chartered surveyor's report about the structure of the complex, the state of repair and about how often maintenance will be needed.



How good is the existing management company?

If you are buying in an established complex, make sure there is a management company in place. It should:

- » have a good and active board of directors;
- » have a service charge that covers all services and standards that you will need; and
- » have an adequate 'sinking fund'.

The sinking fund is money that is put aside every year to cover the cost of major long-term expenses such as replacing lifts.

Ask the management company when an AGM was last held and whether the annual returns and accounts have been filed. If this is not done, it can lead to huge fines from the Company Registration Office and difficulties when selling a property.

It is also crucial that you find out if the common areas inside and outside the building have been handed over to the residents by the developer.

What if the building needs a major overhaul?

Check when the last major overhaul of the complex was carried out. If no major refurbishment has been conducted for at least five years, there will be big demands on the sinking fund. If there is not enough money in the fund, all property owners will be expected to contribute to this cost.

Make sure that the plumbing is satisfactory. Water leaks are a major problem in apartment blocks that have not been properly maintained.



Is the building safe and secure?

Check that a valid Health and Safety Statement is clearly displayed.

In particular, check that:

- » fire exits are kept free and clearly marked;
- » emergency vehicles have easy access; and
- » all lifts and gates are working.

Find out when the last fire inspection was carried out and if there is a Health and Safety Officer in the management company.

Check that the following are all working and that they are checked frequently:

- » a CCTV (closed circuit television);
- » intercom;
- » alarm system; and
- » a safe entrance where people key in a PIN code (personal identification number).

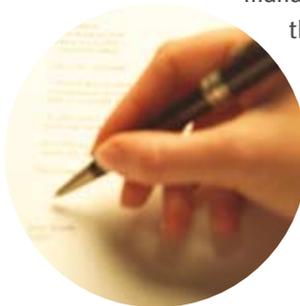
Get the best from your 'service charge'

Every property in a managed complex carries a 'service charge', which must be paid to the management company.

It is important that you get the type of service that is necessary and that this is value for money.

What is a 'service charge?'

All members of property management companies – effectively every apartment owner – must pay a service charge. This fund covers the costs of running the apartment development.



Each year the property management company decides how the fund should be spent. It decides the budget for that year and outlines what services the company intends to use during the year. This includes things like cleaning and employing a management agent.

The property management company also decides:

- » how much money must be put aside for future jobs such as painting or re-carpeting; and
- » how much money must be put aside in a 'sinking fund' for longer term or unforeseen expenses.

The service charge is decided by apartment owners through their management company, not by the property agents.

The percentage of the overall cost of running the apartment complex that each apartment owner must pay will be set down in the lease you sign with your solicitor.

What is covered in my service charge?

The service charge is used to pay for all expenses related to the development, such as:

- » insurance;
- » electricity;
- » lift maintenance;
- » cleaning;
- » garden and grounds maintenance;
- » waste removal services;
- » building repairs and maintenance;
- » painting;
- » gates and barrier maintenance;
- » fire detection and extinguisher system maintenance;
- » intercom system maintenance;
- » pest control;
- » bank charges;
- » management agents' fees;
- » solicitors' fees;
- » administration; and
- » postage.

The service charge should also include a payment into the 'sinking fund' to deal with heavy expenditure such as replacing carpets, gates and lifts, and paying for unforeseen emergency expenses.

Should we focus on getting the lowest possible service charge?

It is important to make sure you get value for money and that all service charges are properly spent. But it is also vital to make sure that enough money is collected to pay for the long-term maintenance and improvement of the development.

It is not just what you pay into your service charge that is important. It is also crucial to know what services you will get. Careful financial planning is vital.

For example, you must put money aside every year to average out the cost of recurring jobs such as re-painting and re-carpeting.

Money must also be put aside for things like lifts and gates, which will eventually need to be replaced using money from your 'sinking fund'.

What happens if we don't pay our service charge?

If your management company does not collect charges and there is no sinking fund it will run short of money. In time it may not be able to provide even the most basic services.

If any individual apartment owner does not pay their fees, any outstanding debts can be tied to your apartment. They will be deducted from the money you receive once the sale is gone through. Some complexes also charge interest on money owed.



How do I check that my service charge is correct?

The service charge bill has to be delivered to each individual unit. Check the following questions by looking at your lease.

- » Is the invoice timely (does it arrive at the intervals stated in the contract)?
- » Does the invoice break down the total cost into individual items?
- » Do the costs relate to your building?
- » Are total costs shared as agreed in the lease document?
- » Are the costs of empty apartments borne by their owners?
- » Are commercial units shown separately (where appropriate)?
- » Are all items charged as agreed in the lease document?
- » If “other costs” are shown, are they broken down in enough detail and as agreed in the lease document?
- » Does the statement or bill appear reasonable and is it understandable?

If problems arise with management fees, service charges or the sinking fund, you should contact the property management company for clarification. They, in turn, should approach the management agent.

What should I do if I am buying a newly built apartment?

If you are buying a new apartment, you should know that the service charge may be set low in the first year because it is easy to maintain a new property.

However, charges are likely to increase as maintenance demands grow. Find out how much the service charges are in similar, but older, apartment complexes in your area.

What questions should I ask about service charges before I buy my apartment?

- » Check with your solicitor how service charges have been divided between individual owners (this will be shown in your lease).
- » Find out how much your service charge will cost and ask for a detailed list of services that it covers.
- » Find out about service charges in similar developments (age, size, style) in the area.
- » Request a five-year projection of service charges and management fees.
- » Ask to see the most recent set of financial statements from the management company, if available.
- » Ask about the sinking fund. If it is low or doesn't exist owners will have to pay more when significant work has to be done.
- » Is there a history of withholding charges in the complex? By not paying service charges, residents damage the financial health of the management company and its effectiveness. This will badly affect the value of your investment.

What about tenants?

In general, landlords pay the service charge. However, this will depend on what the tenancy agreement says.

A landlord must forward any complaint received in writing from the tenant to the management company. They must also send on any reply from the management company to the tenant. The management company must “have regard” for the tenant’s complaint – in other words, it must not ignore it.

If you are a tenant, try and get your landlord to agree for you to go to the AGM to be able to vote on spending (apart from the amount paid into the sinking fund).



Service charges and housing estates

Traditionally, local authorities ran housing estates, but now this is being done more often by management companies.

You should find out how an estate will be run before you buy a house in it.

Will my new house have a service charge?

In recent years some local authorities have made it a condition for granting planning permission that the finished estate (sometimes with a mix of housing types and commercial units) should be managed by a management company.

In such cases, the local authority will not take the finished estate 'in charge'. This means it will not take responsibility for roads and common areas in the estate.

The documents that the purchaser has to sign must show that this management company exists. However, this information is often not clearly communicated or understood. Always ask your solicitor if the planning permission requires that a management company is set up.

What happens if my housing estate is run by a property management company?

In theory, buyers should automatically become members of the management company. However, most estates where the local authority has endorsed management companies are still relatively new.

The management companies may still be in the hands of the developers and this can leave residents relatively powerless.

What should I check before buying a house in an estate run by a management company?

If the estate will be run by a management company and not the local authority, make sure you check the following.

- » Does the contract refer to a management company that manages the estate? Make sure your solicitor explains what this would mean.
- » What is the management company's registered name?
- » Is the management company still influenced by the developer?
- » Have the common areas been handed over by the developer to the management company?
- » Have annual returns and accounts been filed by the management company? If they fail to do this, it can lead to huge fines from the Company Registration Office. This may cause problems when a property is being sold. You are entitled to get financial information from these files, which are held in the Company Registration Office.
- » Who is the property management agent?

- » What other estates are managed by the management agent? Make a point of visiting these estates to see how well they are managed.
- » Is there a residents' association? It may be wise to talk to an officer of the association to find out how well the residents, the management company and the agent work together.
- » Are residents in conflict with the management company (for example are they refusing to pay service charges)? If they are, the management company may eventually collapse and no services will be supplied.

Troubleshooting potential problems

It is important that you know your rights when dealing with any problems that can arise with the management of your property. Here is some useful information.

How do I check the accounts of my property management company?



Before the AGM each year, every member must see a copy of the management company's accounts for the previous year. An independent auditor must verify these accounts.

The accounts show how the money was spent during the year and how much is left over in the 'sinking fund'. The law requires that at the AGM the members vote to ratify (approve) the accounts. The accounts can then be lodged with the Companies Office.

How do I check who else is a member of the management company?

When you buy an apartment you become a member of a property management company. You need to know who the other members are. Many may not be owner-occupiers but investors who rent out their properties. If you contact the secretary of the management company they should be able to give you a list of members.

What problems might owners have when running their property management company?

It can be a major problem if many of the owners are not interested in the management company. This is a particular problem in complexes where a lot of the properties are rented out.

Other problems can include:

- » absentee landlords (landlords who do not live in the complex), who are often not interested in day-to-day issues;
- » lack of basic facilities such as space set aside for a boardroom or for meeting suppliers; and
- » members who may have no experience or training to do with running a company.

What do I do if I am unhappy with how my management company is run?

If members are unhappy with the running of the management company, they can call an Extraordinary General Meeting (EGM) to talk about their concerns.

The 'Memorandum and Articles of Association' – the rules that govern the operation of the company – is a vital document for the running of the company. It should be carefully examined.

If the management company fails to hold an AGM in a particular year, you can ask the Director of Corporate Enforcement to require that an AGM be held. The Director's staff will also try to secure the rectification of any failure by a company or its directors to make available to members the company's annual accounts. In fact if you have concerns about any company law matter, you should consult the published guidance material which is available at www.odce.ie. This may enable you to take steps yourself to assert your rights or to prepare an appropriate complaint to the Director's Office.

What happens if a property management company fails?

If owners fail to make a management company work, they may lose money on their investment. Apartments in run-down complexes are difficult to rent out or sell.

If the management company fails to file financial returns, they risk heavy penalties. This would decrease the re-sale value of apartments in the complex.

What type of services should my management agent provide?

Financial: your management agent should provide the following services

- » Prepare a plan for a 'sinking fund' that will pay for recurring maintenance.
- » Estimate the necessary annual service charge.
- » Pay wages and prepare invoices.
- » Regularly bill people for service charges (including management fees) and collect these fees.
- » Provide a regular report of income, spending and cash flow.
- » Prepare annual draft accounts before the audit and then co-operate with the auditors.
- » Prepare and send out notices for the AGM and any EGMs.

- » Manage the collection of arrears.
- » Advise on the types of insurance needed.
- » Work with residents: your management agent should provide the following services
- » Attend to routine enquiries from residents (owners and tenants).
- » Respond to solicitors' and property owners' enquiries.
- » Attend general meetings of residents.
- » Handle insurance claims



Repair and maintenance:
your management agent should provide the following services

- » Plan for recurring maintenance and repairs.
- » Deal with day-to-day repairs and maintenance promptly and efficiently.
- » Prepare maintenance plans and contracts for plant and machinery such as lighting and lifts.
- » Advise on major contract work and the use of specialist professionals and contractors.

Obeying leases

Your management agent should make sure that people obey the terms of leases and policies that have been agreed with the board. Where necessary, they should instruct solicitors to take action when people break the rules.

Legal planning and control:
your management agent should provide the following services

- » Create a legal, safe and effective plan that fits in with current 'best practice'.
- » Liaise with the company's solicitors.
- » Keep adequate records.
- » Comply with 'risk management' and health and safety laws.
- » Provide secretarial services for the management company.

Staff management:
your management agent should provide the following services

- » Prepare job descriptions for employees and for contractors. There should be competitive tenders for any jobs that need to be done.
- » Supervise any employees and regular contractors, such as cleaners.
- » Make sure that anyone who works on behalf of the company has appropriate training and that they obey health and safety employment law as they work.



Board support:
your management agent should provide the following services

- » Give the board advice about management policy.
- » Go to board meetings, record the minutes and make them available to the board.
- » Give a report on financial, maintenance and legal matters.
- » Report on communications from residents.
- » Keep a file on any management procedures and issues.
- » Produce a periodic newsletter for residents.
- » Tell the board what progress has been made on actions previously agreed.

Questions you should ask potential management agents

If the management agents you are thinking of hiring are not quoted companies (they are not listed on the stock market) they should provide all relevant company details, including the names and qualifications of all directors and a list of owners.

They should answer the following questions.

- » Will your fees carry VAT?
- » How close are your offices to our property?
- » How many years have you been in the property management business?
- » How many staff in your company are involved with management?
- » How many blocks do you manage, and how many units are in them?
- » Can you provide three references for blocks managed, preferably similar to our own property and in our area.
- » Can you give us the name and phone number of the chairman (or secretary) of the management companies in those blocks.
- » What is your fee structure?
- » How can you convince us that you can offer a quality service at a fair cost?
- » How wide-ranging is the panel of contractors you have?
- » Do you charge a fee for providing us with a contractor or a percentage of their charges?
- » How do you choose the contractors on your panels?
- » How often does a representative from your company visit the blocks that you manage to check on how your contractors fulfil their obligations?
- » What IT (information technology – computers) facilities do you have and what information can you record and keep updated?
- » Are you registered under the Data Protection Act?

Where and how do you keep the money raised from our service charge? How is this money managed and who receives any interest?

- » Can you show us an example of how financial records will be kept about our block?
- » How do you deal with unpaid service charges? What procedures are in place to deal with non-paying tenants?
- » How do you deal with tenants who break their leases?
- » How do you deal with complaints?
- » Do you offer an out-of-office-hours service for emergencies? If so, please provide details.
- » How much notice do you need to carry out required work?
- » How much notice do you need to cancel a contract?
- » Can you give us a list of your staff that we are likely to deal with and their qualifications?
- » Can you list any professional or trade bodies to which your firm belongs?

- » Can you give us full details of your professional indemnity insurance?
- » Can you give us proof of your financial status?
- » Can you give us a copy of any standard contract you use?

Further copies of the booklet can be obtained by ringing 1890 432 432

or logging onto www.consumerconnect.ie