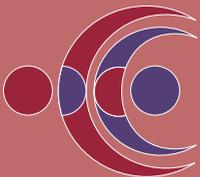




Management Companies

A Property Owner's Guide To
Company Law



Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement



Plain English
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Introduction

If you are the owner of an apartment, you will probably be a member of a management company. A management company might also operate in a housing estate. These companies are responsible for maintaining the common areas and facilities in these developments.

You can check your membership of a management company by:

- inspecting the register of members (which is usually kept at the company's registered office),
- reviewing the documents you signed when you bought your property, or
- contacting your solicitor.

A management company usually is a company limited by guarantee. This booklet summarises the following company law issues for this type of company:

- the management company and the managing agent,

- the role of members in a management company,
- the role of directors and the company secretary,
- the financial statements, the auditor and the annual return, and
- redress under company law and the limited role of the ODCE.

Because this booklet is a short document, some issues are only briefly discussed. For more detailed information, see:

- the Company Law Handbook on Residential Property Owners' Management Companies (2012), which is available at www.odce.ie, or
- the Guide to Buying and Living in a Multi-Unit Development Property in Ireland (2008) which is available at the National Consumer Agency's website, www.nca.ie.



The management company and the managing agent

What is a management company?

A management company owns the common areas of a multi-unit development and maintains them for the benefit of all the property owners. A multi-unit development comprises houses, apartments or a mix of both. The common areas include the car park, green spaces, communal hallways and corridors in the apartment blocks.

The owners of property in the development become members of the management company and may be elected as directors.

What does the management company do?

Newer management companies can be recognised as they have the words 'owners' management company', or 'OMC' for short, included in their name.

The management company's role is largely decided by the terms and conditions of the title deeds for the property. Typically, the company will:

- maintain in good condition the common areas and the associated facilities, such as lighting, drains, sewers and cables,
- engage third parties, such as a managing agent, a caretaker and an accountant, to provide services or advice,
- arrange insurance to cover risks such as fire, flood, subsidence and public liability, and

- decide the amount of the service charge required to meet all these costs.

In the early phase of a multi-unit development, the developer usually continues to be responsible for maintenance of the common areas. The management company will legally own the common areas but will not be responsible for them at this stage.

The completion of the development should lead to the transfer of responsibilities for the common areas to the management company. When this happens, the property owners (as members and directors of the management company) can influence the company's performance.

Once the company is active, its constitution (or memorandum and articles of association) becomes an important document. The memorandum outlines what the company is permitted to do. The articles contain the internal rules for the conduct of its business.

What does the managing agent do?

The managing agent is the contractor employed by the management company to keep the common areas and facilities in good condition. It is up to the management company to decide what tasks it delegates to the managing agent. These duties should be listed in a formal contract between the management company and the managing agent.

The role of members in a management company

Being a member of a management company

When you buy a property in a multi-unit development, you will usually become a member of the management company at the same time. If you sell your property, your membership transfers to the buyer.

To help maintain the standard of your living environment and protect the value of your property, you should:

- pay the service charge, and
- support your management company by attending the company meetings.

Annual General Meeting (AGM)

The AGM enables members to review the management company's performance and influence its future direction.

Members are entitled to:

- 21 days' notice in writing of the AGM,
- copies of the company's financial statements,
- the directors' and auditor's reports, and
- the agenda outlining the meeting's proposed business.

Some matters, such as the company's financial statements, will be open



for discussion at the AGM. However, these statements do not require the members' approval because they are the directors' responsibility. The directors may also wish to consult the members on other matters (such as the appointment of a managing agent) before they reach their own decision.

The company's directors and auditor are usually appointed at the AGM. Members must vote in favour of an appointment before it is valid. Decisions are usually made with the approval of more than half of the voting members. Certain significant business, such as a change in the company's articles of association, requires three quarters of the votes.

Extraordinary General Meeting (EGM)

Directors can call an EGM to discuss an important matter or seek approval for something, such as the removal of a director from the board.

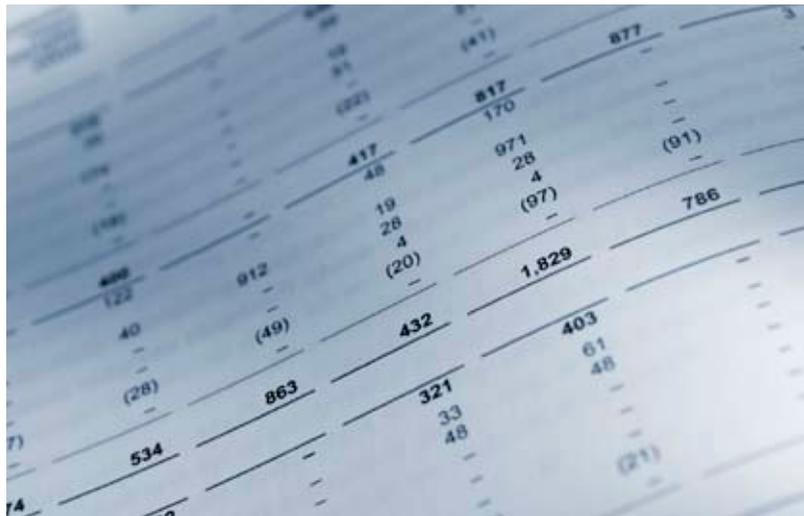
Members holding 10% of the votes in the management company can also demand that the directors call an EGM once those members specify why they want the EGM to be called.

The normal notice for an EGM is 14 days. However, 21 days' notice is required where the members demand an EGM or a decision on the agenda needs approval by three quarters of the votes.

The company must keep a written record of what happens at AGMs and EGMs. Any member is entitled to inspect it.

Members' right to vote

A member's right to vote at an AGM or EGM is decided by the terms of their contract when they bought their property and by the management company's articles of association. Each member usually has one vote and the developer may have a number of votes depending on the number of properties yet to be sold in the development. For example, if the developer is yet to sell eight residential units he has eight votes. Sometimes, the articles will state that a member loses their right to vote if they have not fully paid their service charge.



The role of management company directors and the company secretary

How are directors appointed?

Directors are usually appointed by a majority vote of the members at the AGM. If the board has a smaller number of directors than is allowed under the company's articles of association, the directors may appoint people to serve as directors until the next AGM. The members then decide if these people should be reappointed.

Directors can resign by writing to the company secretary. Sometimes, the company's articles also require that the longest serving directors resign so that the members can decide to reappoint them or appoint new directors.

What do the directors do?

The directors run the management company for the members. For example, they decide what services are needed to keep the multi-unit development in good condition. They also decide the amount of the annual service charge required to pay for those services and they make the arrangements for collecting this charge.

Directors are free to consult the members before making any decision. However, they do not need to obtain the members' permission before they make their decisions unless the law or the company's articles require it.

The directors, individually and collectively, must act in good faith and in the best interests of the company. They also must carry out their duties with skill, care and diligence and meet their legal obligations. Sometimes directors can be liable for breaches of their duties and obligations, although they can limit their liability by taking out insurance, which the company pays for.



Directors' meetings

Directors should meet regularly to conduct the management company's business effectively. Notice of each meeting and its agenda should ideally be circulated in advance. To be valid, at least two directors must attend the meeting, although the company's articles can vary this. While only the directors and company secretary are entitled to be present, others can attend if invited.

A written record of the decisions of each meeting must be kept. The members are not entitled to inspect it unless permitted by the company's articles.

How is the company secretary appointed?

The company secretary is usually appointed by the directors. The company secretary can be one of the directors, but the directors can decide to appoint another person, such as the company's solicitor or managing agent, if they are willing to act as the secretary.

What does the company secretary do?

In general, the company secretary serves the board, manages the company's day-to-day administration and ensures that it meets its legal obligations. Some typical duties include:

- updating the register of members,
- keeping the written record of directors' and members' meetings,
- communicating with the company's contractors and advisers, and
- completing and filing the company's annual return.



The financial statements, the auditor and the annual return

Financial statements of a management company

The management company and its directors must keep accurate financial accounts and prepare a set of financial statements every year. These statements include:

- the company's income and expenditure during the year,
- the company's assets and liabilities at the end of the year, and
- explanatory notes, which provide more details of the company's financial position.

The directors must also produce a report for the members outlining the current state of the company's affairs, including any important events since the end of the last financial year and likely future developments.

What does the auditor do?

The auditor examines the management company's accounts every year and makes a report to the members about whether, in his or her opinion, the financial statements give a true and fair view of the company's financial position at the end of the year.

A qualified accountant who is registered to be an auditor will generally do the audit.

Annual return to the Companies Registration Office (CRO)

Management companies must make a return every year to the CRO. The financial statements, auditor's report and directors' report accompany this annual return.

If a company fails to file its annual return, it may be struck off the Register of Companies. This means that the company no longer legally exists. This can prevent the sale and purchase of properties in the multi-unit development.

The company can only get back on the Register by filing all outstanding returns and paying late filing penalties. If the company has been struck off for more than six years, a High Court order is required. For these reasons, each management company should file its annual return on time.

The company also has to notify the CRO promptly of other events (for example, its formation, changes of directors and any change of registered office). Further information on company filing requirements and on the documents to be filed is available at www.cro.ie.

Anyone can inspect company documents at the CRO by paying a small fee.

Redress under company law and the limited role of the ODCE

Where company law can help

The Companies Acts deal primarily with the manner in which companies should be governed. If a company or director fails to comply with company law, you should draw their attention to it and ask them to correct the default promptly.

If this fails, you may use a more formal procedure. Any member may serve a notice on the company or director requiring them to remedy the company law default within 14 days or any longer time period specified in the notice.

If they still fail to do so, the member may apply to the High Court for an order requiring the company or director to comply with the obligation.

Other possible remedies open to members include applying to the High Court for:

- a remedial order if the company's affairs are being conducted in an oppressive manner or in disregard of members' interests,
- the appointment of an inspector to investigate possible misconduct within the company (if one fifth or more of registered members apply), or,
- the winding up of the company. This step would only be contemplated

in extreme situations including where there is deadlock in the management of the company or it is being used as an instrument of fraud.

As with any legal issue, you should always consult a solicitor before taking action. This is particularly the case where expensive court proceedings are being considered.

Where company law can't help

Company law has little to do with many common problems arising in multi-unit developments. These include:

- the quality of maintenance services provided by a managing agent;
- the level of service charge, and
- delays in transferring common areas from a developer to the management company.

If, as a member, you experience problems like these, you should first try to resolve them in co-operation with the developer, the managing agent, the directors of the management company and/or the other property owners.

If you remain unhappy with the manner in which the management company is being run, you should consider becoming a director or securing the appointment of new directors to the board.

Members of management companies also have certain rights under the Multi-Unit Developments Act 2011. For more information on this log on to www.consumerproperty.ie, which, is a website run by the National Consumer Agency.

What the ODCE can do

If a company law offence has been committed, you may make a complaint to the ODCE. Details of how to do so are available at www.odce.ie. We will try to remedy the default or prosecute the responsible company or director if that is appropriate.

We can also direct the calling of an AGM if one is overdue.

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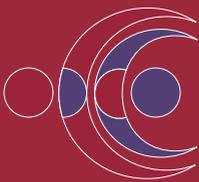
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