

Common Repair, Common Sense

**A short guide to the management
of tenements in Scotland**



Second edition

About Consumer Focus Scotland

Consumer Focus Scotland started work in October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland. Consumer Focus Scotland works to secure a fair deal for consumers in both private markets and public services by promoting fairer markets, greater value for money and improved customer service.

While producers of goods and services are usually well organised and articulate when protecting their own interests, individual consumers may not be. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or shoppers in a supermarket.

We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

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Introduction

While this guide tells you about your responsibilities and rights under the law, it does not give a full explanation of the law or tell you about the specific obligations that apply to your own property. That information can only be found in your **title deeds**. For guidance on your title deeds, ask your solicitor.

Words shown in bold type the first time they are used in this guide are explained in the glossary on page 40.

1.1 What is a tenement?

A **tenement** has traditionally been thought of as a residential sandstone or granite building of three or four storeys, but it has a broader legal definition:

A tenement is a building comprising two or more related flats that are divided from one another horizontally.

Therefore, large houses that have been converted into flats, high-rise blocks, four-in-a-block and modern apartment blocks are tenements. So too are blocks of flats with commercial properties in them, such as

ground-floor shops, and so are office buildings if they also have two or more flats. A 'flat', in this definition, does not have to be residential and can be on more than one floor.

1.2 Property maintenance – what is the law?

New laws introduced by the Scottish Government place a firm responsibility on owners to actively maintain their property:

- **The Tenements (Scotland) Act 2004** provided a structure for maintenance and management of tenements where there is a gap in title deeds.
- **The Housing (Scotland) Act 2006** gave councils powers to make owners do maintenance for which they are responsible.

Both laws are covered in this guide.



2 Rights and responsibilities of tenement flat owners _____

While you are solely responsible for the upkeep of your own flat or house, parts of the tenement building or estate are normally the joint responsibility of all the owners whose title deeds say they have a right of **common property**. In a tenement this will typically include parts such as the common stairs or lifts. In an estate, access roads are typically common property.

As well as your responsibilities for **maintenance**, the law says you must not:

- do anything that would interfere with any part of the building that provides support or shelter. This would include knocking down internal walls without replacing the structural support, or knocking holes in walls for boiler ventilation and not making the hole properly weather proof; or
- do anything that would interfere with the natural light in any part of the building.

If you own a tenement flat, you are also responsible for maintaining those parts in which you have a 'common interest'. These include the parts that provide support and shelter for the building as a whole, such as the external walls and normally the roof. Your fellow owners can enforce this responsibility.

You will find details of your rights and responsibilities in:

- your title deeds; or
- the **Tenement Management Scheme** (if your title deeds have gaps or defects).

2.1 Title deeds

Your title deeds normally tell you about your rights and responsibilities for your own flat and your shared responsibilities for the tenement. Your title deeds may:

- tell you about your responsibilities for the management and maintenance of the **common parts**;
- tell you how decisions about them should be taken;
- tell you how costs are to be allocated between owners;
- specify arrangements for paying for maintenance work and services.

The conditions in your title deeds are obligations – known as **real burdens** – that go with the ownership of your flat. When you bought your flat, you accepted the conditions, and they will remain with the flat when you sell it. They are put in the title deeds to control the use of the flats in the tenement, for example by banning business use, or to ensure that the owners maintain or contribute to the maintenance of the common parts.

Your title deeds will be registered with the **Land Register of Scotland** or the **Register of Sasines** or sometimes both.

If you don't have a copy of your deeds, you can get one from:

- the **Registers of Scotland** (which maintains the Register of Sasines and the Land Register of Scotland);
- the solicitor who did the conveyancing when you bought your flat, if you don't have a mortgage; or
- your mortgage lender.

Your solicitor or lender may charge a fee for a copy of your title deeds. If you are buying a property, you should always ask for a copy of your title deeds.

2.1.1 How can I change conditions in my title deeds?

You and your fellow owners may want to change the burdens in your title deeds, for example if they are no longer necessary or you feel they are unfair.

The process for changing your deeds depends on how many of the owners in a tenement agree to the change:

- If all of you agree, then it is straightforward. A solicitor will be able to draw up the required deed and the **Lands Tribunal for Scotland** will certify the change.
- If the majority of you agree that you want a condition in your title deeds changed, again the deed is drawn up and sent to the Lands Tribunal for Scotland. Those against the change can send a formal objection to the Lands Tribunal for Scotland if they wish. The Tribunal will consider the change and make a decision.
- If at least 25% of the owners wish to make a change, they can apply to the Lands Tribunal for Scotland for a decision.

If you wish to make changes to your title deeds, you will need to use a solicitor to do so. Fellow owners must be given the chance to object. Any changes to your title deeds, and the title deeds of any of your fellow owners who are affected by the change, must be registered in the Land Register of Scotland or the Register of Sasines. You will be charged fees by the solicitor for preparing the changes and by the

Registers of Scotland for registering them. A solicitor, the Registers of Scotland or a local advice centre can give you information and advice.

If you get notice that someone is planning to get the title deeds changed and you don't like what is planned, act immediately. Consult a solicitor. You only have a few weeks to act.

2.2 The Tenement Management Scheme

The Tenement Management Scheme is a scheme that can be used where your title deeds have gaps or defects. For example, your title deeds may not say how decisions should be taken, or may not describe all the common parts, or they may allocate shares of costs that do not add up to 100%. You and your fellow owners can use the different sections of the scheme to make up for gaps or defects, but otherwise you must follow your title deeds.

The Tenement Management Scheme:

- defines maintenance;
- defines **scheme property** (the parts that everyone is required to maintain);
- tells you how you should make decisions about maintenance (called **scheme decisions**); and
- tells you how costs are shared.

This section tells you about each of these elements of the Tenement Management Scheme.

2.2.1 What is meant by 'maintenance'?

Many of the legal rights and responsibilities of tenement flat owners apply only when 'maintenance' is being carried out.

Maintenance is:

- repairs and replacement;
- cleaning;

- painting and other routine works;
- gardening;
- the day-to-day running of the tenement;
- the reinstatement of part (but not most) of the tenement building.

Maintenance does not mean alteration, demolition or improvement, unless the improvement is part of the maintenance work. For example, if you need to replace the main door, choosing one with a more suitable specification or adding a better modern lock is likely to be counted as maintenance, rather than improvement. Maintenance in tenements does not cover redecorating privately owned areas, unless damage caused while repairing common parts makes redecoration necessary.

2.2.2 Scheme property

The principle of '**scheme property**' is that some parts of the tenement, such as the main structural parts, are so vital that their maintenance should be the responsibility of all owners who have common property rights in those parts.

Scheme property includes:

- any part of the tenement that your title deeds say is the common property of two or more owners, for example the close or stair;
- any other parts of the tenement that your title deeds say must be maintained by two or more owners, for example the gutters and downpipes. Some title deeds will identify which parts are the property of only those who have use of them, for example drainpipes serving flats on one side of the building;
- the ground on which your tenement is built (but not the back court or front garden);
- the foundations;
- the external walls;
- the roof, including the rafters and any structure supporting the roof;

- the part of a gable wall that is part of the tenement building;
- any wall, beam or column that is load-bearing.

The following are not scheme property but are the property of individual owners:

- parts such as doors and windows, skylights, vents or other openings that serve only one flat;
- any chimney stack or flue that serves only one flat; and
- any extension that serves only one flat.

2.2.3 Taking scheme decisions

The Tenement Management Scheme outlines how owners should take 'scheme decisions' about having maintenance carried out. Like other parts of the Tenement Management Scheme, the requirements only apply if there are gaps or defects in your title deeds.

You and your fellow owners must take proper scheme decisions on the following:

- carrying out maintenance to scheme property;
- having maintenance inspections carried out on scheme property;
- appointing or dismissing a **property manager**;
- authorising a property manager to carry out inspections and arrange maintenance;
- arranging a common insurance policy;
- deciding that an owner does not have to pay any or all of his or her share of a scheme cost;
- authorising **emergency work** or any maintenance of scheme property where that work has already been carried out by one owner;
- installing or replacing a door-entry system controlled from each flat; and
- changing or cancelling any previous decision.

If the Tenement Management Scheme applies, scheme decisions on maintenance can be taken by a simple majority of owners. However, you can only vote on decisions about maintenance if you are responsible for paying towards the maintenance of that part of the tenement (for example, you would not get a vote on a decision about a downpipe that did not serve your flat). Decisions about improvements, for example installing a communal satellite dish, must be unanimous unless your title deeds set out other voting terms for them.

All owners entitled to vote on a scheme decision must get at least 48 hours' notice in writing of a meeting. Notices can be posted, faxed or emailed to the owner or their agent. If an owner is not contactable or not known, then you (or your solicitor or agent) can post the notice through the door of the flat, addressed to 'The Owner'. Notice starts from the day of posting or sending.

If a meeting can't be held you must still consult all the other owners entitled to vote on the matter, perhaps by calling round the doors and keeping a record of the decisions. You are only required to consult those who can practically be contacted (see 3.2 for advice on how to find absent owners or landlords).

The key points about making scheme decisions are:

- **a properly made decision is binding on all owners (even if they did not agree);**
- **each flat carries entitlement to one vote regardless of whether the flat has more than one owner (for example a couple with a joint mortgage only get one vote);**
- **an owner can appoint someone else to make decisions on their behalf.**

It is important to follow the correct procedures because:

- i. an owner can appeal against the actions of fellow owners or refuse to pay because of a procedural irregularity (see 6.1 for more information);**

- ii. owners will need to show that they have followed correct procedures if they wish to apply to their local council to pay any missing shares (see 6.3 for more information).

2.2.4 Sharing the costs of repairs and maintenance

Owners become responsible for costs from the point when the scheme decision is made or emergency work commissioned (see 2.3 for more information on emergency work). Your title deeds usually tell you how costs are to be shared between owners, but if there are gaps or defects you should use the Tenement Management Scheme.

Under the Tenement Management Scheme, all owners share equally in the costs of maintenance and repair, inspections, installing door-entry systems and running costs such as management fees or for lift maintenance. However, there are two exceptions:

- i. where the work involves maintenance of a part that does not serve the whole tenement. In this case only the responsible owners are liable for the costs and they pay equal shares of these costs; and
- ii. where the floor area of the largest flat is more than one-and-a-half times that of the smallest flat. In this case, liability for repair costs (but not inspections and running costs) for scheme property is in proportion to the floor area of each flat.

2.3 Emergency work

Owners also have powers to deal with emergencies.

Emergency work is:

- work that would prevent damage to any part of the tenement; or
- work required in the interests of health and safety that cannot wait for a scheme decision to be taken.

There is no legal definition of an emergency. Few repairs are likely to be this urgent, however, and you should follow proper procedures for taking scheme decisions and commissioning repairs if possible. Otherwise, in any dispute over such work, you and your fellow owners

must be able to justify what you have done, or you may appear to have acted without following the proper procedures and may find it difficult to recover costs. If you cannot prove it was an emergency, you may find yourselves paying for the cost of the work.

If you think the work required might be emergency work, you can contact the council for information and advice.

If the work is indeed an emergency, you or any other owner can instruct work without a scheme decision. You will all be liable for the costs in the same way that you are liable for maintenance costs (see 2.2).



3 Managing the tenement _____

This section tells you what you can do to manage your tenement better and to get more out of your property manager if you employ one.

3.1 Talking to and meeting with your neighbours

You should communicate regularly with your neighbours about tenement management. This can be done through individual contact, email, letters or regular meetings. Meetings give people a chance to discuss issues, iron out misunderstandings and come up with better decisions.

Research shows that property management arrangements usually work much better if there is an owners association or some effective arrangement for communication amongst owners. Your council, or property manager if you have one, may be able to provide advice on how to set up an owners association.

3.2 Finding landlords and absentee owners

There are two mechanisms for tracking down landlords or absentee owners:

- The Registers of Scotland can provide the address given for the owner at the time he or she bought the flat. They may also be able to tell you of other properties in the same ownership. You will need to pay a small fee for each area searched.
- If the flat is rented, then the owner should be registered with the council as a private landlord. You can search the public register at www.landlordregistrationscotland.gov.uk. If you do not find what you are looking for, please contact the council where the property is located, or where you think the person or company should be registered, for further assistance.

3.3 Property managers and factors

Owners may appoint an agent, called a property manager or '**factor**', to manage all or some of the owners' maintenance responsibilities for a fee. You are not normally obliged to have a property manager, but if you do they should provide some or all of the following services, depending on what you are willing to pay for:

- **Routine maintenance:** Your manager should arrange for an annual inspection of the property and take appropriate action to deal with any problems identified by the inspection.
- **One-off works:** For work outwith a routine contract, your manager should obtain estimates for the work and send them to you (the owners). If a majority of you agree to accept the estimate, the manager will instruct the work to start. They may ask you to pay some of the costs up front.
- **Additional services:** Your manager can provide additional services for a fee, for example organising and administering common insurance for the building, or managing maintenance contracts for lifts, boilers and gardening services.

While property managers are normally private businesses, some councils and housing associations carry out property management services. This may be because the property was bought from a council or housing association under the **Right to Buy** and they have

carried on providing property management services. Alternatively, the local council or housing association may own other properties in the tenement and decide to take on property management. There are special rules for appointing and dismissing property managers in these cases (see 3.3.5).

3.3.1 Working with your property manager

As with any relationship, good communication is the key. You must give the manager clear instructions about any decisions you take on common maintenance. You may find it helpful to nominate one person to communicate directly with the manager. You should also have an arrangement for telling the manager about any problem that comes to an owner's attention or about unsatisfactory repairs or services, so that they can be put right without delay.

3.3.2 How can we be sure about the quality of the service?

Private property managers that are members of Property Managers Association Scotland are expected to keep to a code of practice. If you decide to appoint or change a property manager, the association can give you details of local members (see section 7 for contact details).

Councils and housing associations may also provide property management services but some may only offer this service where they own, or used to own, other parts of the common property. The Scottish Housing Regulator requires them to meet specific standards and have customer care policies that tell you what you can expect and how they will put things right if they fail to meet the standards (see section 7 for contact details).

The Scottish Government is developing a national accreditation scheme for property managers, which will be based on a comprehensive set of standards. For further information, or to find out if this is in place, please contact the Scottish Government (see section 7 for contact details).

3.3.3 Paying for property management services

Usually, you will be charged a monthly, quarterly or half-yearly management fee and you may be asked to pay into a float when you first move in. The float is to ensure that the manager has sufficient funds in hand to pay for regular costs or small repairs. You may also be asked to make regular payments to a sinking or **building maintenance fund**. The fund contributes to future maintenance and repair costs and helps to avoid the need for a large one-off payment.

When routine work has been done, the manager will check the contractor's invoices and, once approved, pay them from the float or **sinking fund** or bill you individually, depending on your arrangements. Where work is non-routine, the manager may ask you for payment before the contractor starts work. The manager will also collect common charges and report any arrears to the owners. The manager must keep accurate records on work carried out on your property and provide you with details of payments made.

To help maintain a good working relationship with your property manager, you should make sure the manager is paid on time.

3.3.4 Complaints

If you have any complaints about unsatisfactory work by a contractor, your manager should investigate them and tell you what they have done to resolve the problems.

If you have a complaint about the property manager, you should write to them and give them a chance to put things right. If you get a poor or no response, ask about the complaints procedure. It is not advisable to withhold payment, as your property manager may assume that you are simply a bad payer and take action to recover the debt rather than deal with the management issue. It may be safer to pay a disputed bill and ask for a refund on your next bill. If you get no satisfaction, talk with your fellow owners about changing your property manager.

3.3.5 What is the procedure for appointing or dismissing a manager?

The procedure for appointing or dismissing a manager will depend on your title deeds, but:

- regardless of what your title deeds say, a majority of two-thirds of the owners can agree to appoint or dismiss a manager;
- if your title deeds do not set out a procedure, a simple majority of owners (over half) can decide to appoint or dismiss a manager.

All owners are bound by the decision but those who disagree can appeal in specific circumstances. If you decide to dismiss your manager, be aware that the manager's contract may specify a period of notice. You should also check the contract to see whether the float, or a portion of it, is to be returned to the contributing owners after the manager is dismissed.

There are special arrangements in three situations:

- i. **New developments:** If your flat is in a new development, the developer may retain the right to appoint a manager for up to five years after the property is built. If the developer chooses to retain this right, the owners can appoint or dismiss a manager only after the five years are over, or when the last property in the development has been sold, whichever is the sooner.
- ii. **Sheltered housing:** If your flat is in a sheltered housing development, the developer may retain the right to appoint a manager for up to three years. If the developer chooses to retain this right, the owners can appoint or dismiss a manager only after the three years are over, or when the last property in the development has been sold, whichever is the sooner.
- iii. **Buildings managed by a council or housing association:** In the case of housing bought through the Right to Buy, the council or housing association has the right to appoint a manager for 30 years or until two-thirds of the properties in the tenement have been sold. They can appoint themselves as manager.

3.4 Common insurance

Under the Tenements (Scotland) Act 2004, you must insure your own flat and your share of the common property so that you can meet your obligations to rebuild the tenement should you need to. However, in reality, you are adequately insured only if every owner is adequately insured.

To help protect owners, the 2004 Act gives owners the right to ask their fellow owners to provide evidence that they are insured to the full **reinstatement value**, with premiums fully paid. The reinstatement value is the cost of rebuilding the tenement rather than just its market value, which may be far less. You must request this information in writing and the owner to whom you make the request must produce the evidence within 14 days. If one owner is not properly insured, any of the other owners can go to court to enforce the obligation that they become properly insured.



4 Managing repairs and building maintenance

Typical management activities include day-to-day domestic tasks such as stair cleaning, regular maintenance, major repairs and emergency work. Your title deeds or, if they have gaps or defects, the Tenement Management Scheme will say how you should go about organising the tasks covered in this section.

4.1 Regular maintenance

Regular inspections followed by prompt remedial action will reduce the costs of minor and major repairs. Delaying remedial work will only make a problem worse and increase the cost of the eventual repair work.

The table below shows what you should be doing to maintain your property and how often. This is only a general guide. You will need a detailed survey to establish the condition of the building and to tell you where you are in the life cycle of its various elements.

A good building maintenance schedule

Every year	<ul style="list-style-type: none">• gutter cleaning• roof inspection and minor reactive repairs• flashings on the roof and cupolas• check and repair harling and render cement coatings• chimney heads and chimney pots• TV aerials and fixings
Every 3–5 yrs	<ul style="list-style-type: none">• door-entry systems• external paint work on doors, windows,• gutters and downpipes
Every 5–10 yrs	<ul style="list-style-type: none">• stair painting• mastic around windows• repair felt roof coverings
Every 10–15 yrs	<ul style="list-style-type: none">• pointing – mortar between stone/brick in walls• replace uPVC windows
Every 10–20 yrs	<ul style="list-style-type: none">• renew render coatings on walls or chimneys
Every 20–30 yrs	<ul style="list-style-type: none">• replace felt roof coverings• major overhaul of tiling on roofs
Every 40–50 yrs	<ul style="list-style-type: none">• replace lead roofs• replace tiled roofs• some work to sandstone walls and chimney heads
Every 50–100 yrs	<ul style="list-style-type: none">• replace slated roofs• replace cast iron gutters and downpipes• replace external woodwork• replace cast iron railings

4.2 Major repairs

Occasionally you will need to have major works carried out on your building, so it is useful to understand how to deal with them. It will be difficult to obtain comparative estimates from different building contractors unless you can describe the work in detail. Professional advice from a property manager, surveyor or architect could save you costly and unnecessary work. Your local council may also be able to help organise major repairs under its scheme of assistance (see section 5.3).

4.3 Access for maintenance, repairs and services

This section only applies if you are following the Tenement Management Scheme because your title deeds do not tell you about access for maintenance.

You and your fellow owners, and people authorised by you, have a right of access to each other's flats, if access is necessary to:

- carry out maintenance that was decided by a scheme decision;
- carry out repairs to a part owned by an individual;
- carry out inspections to decide if maintenance is needed;
- lead through a service pipe, cable or other equipment, as long as it is not wholly within another owner's flat;
- make sure that any part of the building that provides support and shelter is being maintained;
- make sure that none of the owners is doing anything that may damage the parts of the building that provide support and shelter, or doing anything to reduce the natural light to the building; or
- calculate the floor area to decide how costs should be allocated.

The owner or the occupier must be given reasonable notice that access is required and, within reason, can refuse access at inconvenient or inappropriate times.

Where you or a person you have authorised (such as a contractor) gains access to a flat for the reasons above, the flat must be restored to its original condition. If an authorised person causes any damage, you (the owner who gave the authorisation) are jointly responsible with the authorised person for reinstating it or for the cost of repairing it. You can recover your costs from the authorised person.

4.4 Finding a reliable contractor

Some councils run 'trusted trader' schemes, where firms that register go through certain checks and owners can record their views on the firms they have used.

The Scottish Government is working with councils and the construction industry to develop proposals for a national trusted trader framework. In the meantime, check your council's website or speak to their trading standards department to see if they have such a scheme.



5 Paying for repairs _____

5.1 Maintenance accounts

If you and your fellow owners take a scheme decision to carry out maintenance, contractors may only be willing to start work once the money has been collected. Therefore, you can agree that each owner who is liable for a share of the cost should deposit their share of the estimated cost with someone nominated for this purpose. This could be an owner, property manager or agent. If the deposit for the work is more than £100 or, if taken together with other deposits made in the past 12 months, more than £200, then the money must be paid into a **maintenance account**.

Key points to note about a maintenance account, as set out by the Tenements (Scotland) Act 2004, are as follows:

- The account must be one that pays interest with a bank or building society and a property manager or at least two other people (who do not have to be owners) must be authorised to operate the account on behalf of the owners.

- Money must be paid into it on an agreed date at least 28 days after the decision to do the work was taken.
- The Scottish Parliament may change the sums mentioned above from time to time to reflect the value of money. Check current limits with your council.

5.2 Operating the maintenance account to pay for scheme repairs

When a maintenance account is required, you and your fellow owners must be told about it in writing by whoever is nominated to hold deposits. You must also be given a note that summarises the work and details of:

- the estimated cost;
- why it is considered necessary;
- how the shares of the cost have been worked out;
- the other owners' shares;
- the date the decision was made and the names of those who agreed to it;
- the timetable for the work, including the start and finish dates;
- the number and location of the maintenance account and the names and addresses of those authorised to operate it;
- the last date for owners to pay their shares into the maintenance account; and
- a refund date on which you can reclaim your deposit if the work is not started by the start date.

If you are not given a refund date, you can reclaim your deposit if the work has not started 28 days after the start date. Any money left in the account after the work has been paid for must be shared among the depositors in proportion to the shares they deposited.

5.3 Help from your local council

The Housing (Scotland) Act 2006 changed the way councils can help homeowners to do repairs and improvements. The previous system of support meant that owners got either grant assistance or no assistance at all – the scheme of assistance introduced by the 2006 Act will give councils greater flexibility to provide support to more people.

Your council has a scheme of assistance that says how it will help owners maintain their homes. From 1 April 2009 councils have had a duty to prepare and publish a statement of assistance, and have a transitional year to decide when to introduce their schemes. Each local scheme of assistance will be different but they will all have certain features in common:

- You as owners are responsible for the costs of maintaining your properties. The main source of finance for repairs must be your own savings and loans rather than grant subsidy.
- Your council will offer more advice and assistance to owners in future. This may include a wider range of helpful information leaflets; websites; practical help to get work done; perhaps even training courses and special advisers who will be able to help you steer your way through repairs and finding finance.
- Councils will decide their priorities. They may give you more help as a flat owner than as the owner of a house, as many recognise that flat owners have particular problems in getting repairs organised and that repairs to high buildings can be very expensive. However, you are unlikely to get a grant automatically.
- As a last resort, the council may use enforcement powers to carry out work and apply a **repayment charge** to recover funds (see section 6).
- The council's statement of assistance will set out what work the council considers to be a priority. This statement should be publicly available. Priority works will get most help.

5.4 Financial support and advice

If you cannot raise enough money through your income, savings or a commercial loan to carry out repairs, the council may be able to help you get a loan. This may be subsidised, depending on your circumstances. Grants may still be available as a very last resort.

Any help will be means-tested. This will generally include looking at your income, savings, ability to access affordable high-street lending, and wealth (for example, what equity (capital value) you have in your home). This may mean that, for a given repair, an applicant with no free income, equity or savings may receive more financial help than someone in the same situation who has paid off their mortgage. This is because the person with no mortgage might instead get a loan secured on the value of their home to fund repairs.

If you need a loan to fund a large repair, you need to get good financial advice. Generally, the cheapest loan is one secured on your home, and a mortgage adviser will be able to help you.

If you are an older person or have a disability, your local Care and Repair agency or Ownership Options may be able to offer you further help (see section 7 for contact details).

5.5 Help for owners of listed buildings or those in conservation areas

If you live in a listed building, you may have to use traditional materials and techniques to maintain the building. However, if your home is listed or your building is in a conservation area or an area where a town scheme is in place, you may be eligible for special grants. You should contact your local planning office for more information and advice on what you need to do and any assistance you may get.

You can also contact Historic Scotland for information on town schemes in your area. If you plan to apply for grant aid, you must employ a conservation-accredited architect or surveyor to carry out a survey and prepare a report (see section 7 for contact details).

5.6 What happens when an owner sells and works are agreed or under way?

An owner is liable for the costs of work under way, carried out or to be carried out as a result of a scheme decision. If an owner sells their flat during this process, they remain liable for any unpaid costs of the work.

However, it may be difficult to trace the previous owner, once they have moved, to recover what they owe. Therefore, fellow owners should register a 'notice of potential liability for costs' with the title deeds or land certificate. As long as this notice is registered 14 days before the sale takes place, it will make the selling owner and new purchaser jointly liable for the costs. The remaining owners can then ask either the seller or buyer to pay. If the new owner has to pay, they can recover the costs from the previous owner.

If you and your fellow owners wish to register a notice against a flat whose owner is selling and is potentially liable for unpaid costs, you should consult a solicitor.

The most satisfactory solution is to adjust the purchase price to take account of the unpaid costs. The Home Report includes a questionnaire in which sellers should disclose any responsibilities they have for common repair work (see box).

If, while you owned a flat, you made a deposit that remained unspent after work was paid for, you can still recover your deposit after you sell your flat.

The Home Report

Homes put on the market for sale from 1 December 2008 must have a Home Report. The purpose of the report is to give buyers information about the condition and value of a property before they decide to buy.

The Home Report has three parts:

1. a house condition survey and valuation;
2. an energy report;
3. a property questionnaire.

The property questionnaire includes, for example:

- property management arrangements;
- responsibilities for shared and common areas and the shares that need to be paid towards the common repairs;
- details of any compulsory repairs notices, work notices and maintenance orders served on the property;
- any structural problems or storm damage that may have occurred in the past;
- alterations made to the home;
- whether it is listed or in a conservation area;
- details of any notices served on the property; and
- planning applications from neighbours.



6 Dealing with difficulties _____

This section provides information on dealing with difficulties with your fellow owners and the powers that councils have to force owners to maintain their buildings.

6.1 Disagreements about decisions

Various problems can arise when the decision has been made to carry out maintenance work.

6.1.1 Problems with how decisions were made

If a decision is taken irregularly (that is, the correct procedures in the Tenement Management Scheme or your title deeds were not followed), owners are not liable to pay their share of the costs if:

- they were not aware that the decision incurred costs; or
- on becoming aware they immediately objected to the costs being incurred.

The procedural irregularity does not otherwise make the decision invalid but it does mean that the remaining owners will need to cover that owner's share.

6.1.2 Appealing against decisions

You may be unhappy about a decision you did not vote for or a decision taken before you bought your flat where the work has not yet been carried out. If so, you can apply to the **sheriff court** to have it cancelled. However, the sheriff will only cancel a decision made by the majority of owners:

- if it is not in the best interests of the owners as a group; or
- if it is unfair to one or more of them.

You cannot appeal against a decision you have voted for. You should take legal advice about going to the sheriff court. You must apply to the court within 28 days of the meeting at which the decision was made, if you attended that meeting, or from when you were told about the decision. During that time, the decision cannot be implemented.

6.1.3 Where an owner has majority ownership

If the decision you did not vote for was about maintenance and you are liable for 75% or more of the costs of that maintenance, you can cancel that decision by sending the other owners or their agents (that is, persons or firms authorised to act on their behalf) a written notice.

6.2 What happens if an owner is unwilling to pay?

If any owner refuses to pay his or her share (set out in either the title deeds or the Tenement Management Scheme) the obligation to pay can be enforced in the sheriff court by any owner or anyone authorised by an owner or owners.

To obtain payment from an uncooperative owner, the other owners could do the following:

- Ask a solicitor or adviser to write to the owner, pointing out their obligations under the title deeds or the Tenement Management Scheme. This can often be enough to resolve the problem.
- Commission the repair and be prepared to pay the bill themselves.

- Send the uncooperative owner a bill for his or her share with a stated time (say 7–14 days) in which to pay.

As a last resort you can obtain a **decree** by raising an action in the sheriff court for payment against the person owing the money. In these circumstances, you should take legal advice. You may want to ask your solicitor if you qualify for legal aid. Your solicitor will also be able to advise you how to enforce the decree and get the money owed to you. Going to court to enforce obligations in the **title conditions** or Tenement Management Scheme should be your last resort as it can be slow and expensive.

6.3 What happens if an owner is unable to pay?

Under the Housing (Scotland) Act 2006, councils have powers to pay missing shares into maintenance accounts. The 'missing share' provision works like this:

- i. The other owners will have to show the council that they have gone through all the proper procedures for commissioning maintenance.
- ii. Your council should have a framework for deciding who is unable to pay and when it is unreasonable to expect an owner to pay.
- iii. Before paying in a missing share, the council must satisfy itself that the maintenance is reasonable, and that the owner is being asked to pay the rightful share according to the title deeds or the Tenement Management Scheme.

The council can only pay in the missing share where:

- the owner is unable to pay in the funds; or
- it is unreasonable to ask them to do so; or
- the owner cannot be identified or found by reasonable enquiry.

The council is not obliged to pay a missing share. However, if it does, it can recover any costs it incurs, including administration and interest.

If the council will not help by paying missing shares, then the other owners must pay the share equally or in proportion to the area of each flat (whichever applies). If the owner is bankrupt or can't be found, they still owe costs to other owners. If the owner is untraceable, the money could ultimately be recovered from the value of their property. This would require court action. However, the other owners can decide that the missing owner is exempt and divide the costs among themselves.

6.4 Work notice

A work notice is a compulsory repair order which the council can serve to ensure that works are carried out. It can be served against residential owners and owners of non-residential premises that form part of the same building as houses requiring work. The work notice will set out:

- **the reason for serving the notice;**
- **the work required;**
- **the standard that the house should achieve on completion; and**
- **when the work must be completed (which must be a reasonable period and at least 21 days).**

Where the council serves a notice, it must provide owners with assistance – for example information on how to do repairs. It need not do any work on an owner's behalf. However, if the owner does not comply with the notice within the time limit, or to the standard stated in the notice, the council can do the work itself and reclaim the cost from the owner.

6.5 Maintenance orders

A council can serve a maintenance order where an owner has not maintained, or is unlikely to maintain, their property to a reasonable standard. It can also serve a maintenance order where a work notice has been implemented but the benefit of that work has been reduced or lost because of a lack of maintenance. This can apply to owners of

non-residential premises within a building that contains housing and where there are concerns about maintenance.

For example, a work notice might be served because gutters and downpipes left leaking for a long time have led to dampness and dry rot. A maintenance order might require a plan to ensure the gutters are cleaned every year and downpipes painted after four years to prevent the problem recurring. However, a work notice does not automatically mean there will be a maintenance order.

The order requires the owner to develop a maintenance plan to keep the property maintained to a reasonable standard for a period of up to five years. The council will be able to enforce the maintenance plan if required and recover the costs from the owner.

The maintenance order will be recorded in the Land Register so that your lender and any future buyers will see it. You can appeal against the decision to serve a maintenance order. You should take legal advice if you are considering appealing against a maintenance order.

6.6 Maintenance plans

A maintenance plan will set out what regular maintenance work is needed. A joint maintenance plan will cover the common areas of tenements but can also include works that are the individual owner's responsibility (for example, painting windows). Section 4.1 on establishing a building maintenance schedule will give you an idea of what is likely to be in a maintenance plan.

The plan will also set out owners' shares for implementing the works. These must accord with what is set out in the title deeds or the Tenement Management Scheme.

The maintenance plan must set out:

- what maintenance is needed throughout the period of the plan;
- what steps are to be taken to achieve this (e.g. annual surveys);
- when these steps are to happen (e.g. every August); and
- an estimate of the costs.

The owners may also be required to:

- **appoint someone to manage the implementation of the plan; and**
- **open, and deposit sums into, a maintenance account.**

A majority of owners must agree to the plan before the council can approve it. If you do not respond in the time limits set out in the maintenance order, or if the council is not happy with the plan you submit, it can devise the plan instead. You can appeal against the council's decision not to approve the plan or to devise the plan itself. You should take legal advice if you are considering appealing. Once the plan is approved, it will be registered in the Land Register.

The council may ask you to submit a report to the council every year to show that you are carrying out the plan as intended. If there is a problem, the council will probably want to speak to you about this before taking action but if you still don't do the work, the council may step in to do it and then charge you.

Councils have a right of entry to check that the plan is being carried out and can also recover the costs of enforcing the maintenance plan.

6.7 How will the council get its money back from owners?

If a council enforces a work notice, it can recover the costs from you, including interest and administrative costs. The council will notify you of the costs, and will serve a notice on you if you are to pay the sum by instalments. Interest can only start from the date the notice is served.

The council can issue a repayment charge, which is registered against the title of the property concerned, so that anyone buying the house can see that the charge is there. Buyers are likely to want the charge paid off before they purchase the property.

The repayment charge will normally be paid off in 30 annual instalments. The instalments will be set to include interest. You can pay off the charge early if the council agree. If you are interested in early repayment, you should discuss this with the council.



7 Where can we get advice? —

Care and Repair

For your local project contact:
Care and Repair Forum Scotland
135 Buchanan Street
Suite 2.5
Glasgow G1 2JA
Phone **0141 221 9879**
Web **www.careandrepairsotland.co.uk**

Citizens Advice Bureaux

For your local CAB, look in the phone book or contact:
Citizens Advice Scotland
1st Floor
Spectrum House
2 Powderhall Road
Edinburgh EH7 4GB
Phone **0131 550 1000**
Web **www.cas.org.uk**

You can get online advice from the Adviceguide at

www.adviceguide.org.uk/scotland

Confederation of Scottish Local Authorities (COSLA)

COSLA can provide you with contact details for your local council.

Rosebery House

9 Haymarket Terrace

Edinburgh EH12 5XZ

Phone **0131 474 9200**

Web **www.cosla.gov.uk**

Historic Scotland

Longmore House

Salisbury Place

Edinburgh EH9 1SH

Phone **0131 668 8600**

Web **www.historic-scotland.gov.uk**

Lands Tribunal for Scotland

George House

126 George Street

Edinburgh EH2 4HH

Phone **0131 271 4350**

Email **mailbox@lands-tribunal-scotland.org.uk**

Web **www.lands-tribunal-scotland.org.uk**

Ownership Options

The Tudsbery Centre

The Thistle Foundation

Niddrie Mains Road

Edinburgh EH16 4EA

Phone **0131 661 3400**

Web **www.oois.org.uk**

Property Managers Association Scotland Limited

2 Blythswood Square
Glasgow G2 4AD

Phone **0141 248 6472**

Web **www.pmas.org.uk**

Registers of Scotland

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

Phone **0845 607 0161**

Email **customer.services@ros.gov.uk**

Web **www.ros.gov.uk**

Glasgow Customer Service Centre
9 George Square
Glasgow G2 1DY

Phone **0845 607 0164**

Email **customer.services@ros.gov.uk**

Textphone users can contact Registers of Scotland on
0845 607 0168.

Royal Incorporation of Architects in Scotland

15 Rutland Square
Edinburgh EH1 2BE

Phone **0131 229 7545**

Email **info@rias.org.uk**

Web **www.rias.org.uk**

Royal Institution of Chartered Surveyors in Scotland

9 Manor Place
Edinburgh EH3 7DN

Phone **0131 225 7078**

Email **contactrics@rics.org**

Web **www.rics.org**

Scottish Government

Victoria Quay

Edinburgh EH6 6QQ

Phone Enquiry Line **+44 (0)8457 741 741** or **+44 (0)131 556 8400**

Email **ceu@scotland.gsi.gov.uk**

Web **www.scotland.gov.uk**

Scottish Housing Regulator

Highlander House

58 Waterloo Street

Glasgow G2 7DA

Phone **0141 271 3810**

Email **shr@scottishhousingregulator.gsi.gov.uk**

Web **www.scottishhousingregulator.gov.uk**

8 Glossary

Building maintenance fund	See 'sinking fund'.
Burdens/real burdens	An obligation on the occupier of land (or buildings) to do something or refrain from doing something on that land. The obligation 'runs with the land', which means it will continue even when the land (or building) is sold.
Common parts	Parts of the tenement that are not within the boundaries of individual flats.
Common property	Property that is owned by more than one person, where each owner has a right to a share in the whole property, but none has an absolute right to any physical portion of it.
Decree	A court judgment.
Emergency work	Work that would prevent damage to any part of the tenement; or work required in the interests of health and safety that cannot wait for a scheme decision to be taken.
Factor	See 'property manager'.
Land Register of Scotland	Map-based register of title to land maintained by the Registers of Scotland. Nearly all house sales in Scotland are now registered in this register.

Lands Tribunal for Scotland	A court that hears cases and makes decisions about matters relating to land.
Maintenance	Repairs and replacement; cleaning; painting and other routine works; gardening; the day-to-day running of the tenement; the reinstatement of part (but not most) of the tenement building.
Maintenance account	An account set up to pay for maintenance and repair works.
Property manager	A company that provides maintenance, repair and management services. Property management may also be provided by a council or registered social landlord.
Register of Sasines	A register that records deeds relating to land. Some older title deeds are recorded in the Register of Sasines. Today, if new real burdens are being inserted into title deeds, the deed might have to be registered in both the Land Register and the Register of Sasines.
Registers of Scotland	The agency that maintains the two property registers: the Register of Sasines and the Land Register of Scotland.
Reinstatement value	The full cost of rebuilding the property, not just its market value.
Repayment charge	A charge registered by the council against the title of the property to cover costs of work carried out. The charge is paid off in instalments.

Right to Buy	The Right to Buy scheme gives eligible council and housing association tenants the right to buy their property at a discount.
Scheme decision	A decision taken by a majority of the owners of related properties, such as in a tenement.
Scheme of assistance	Council schemes to support owners that set out how the council will help owners maintain their homes.
Scheme property	Parts of the property that are so vital that their maintenance is the responsibility of all owners who have common property rights in those parts.
Sheriff court	A local court presided over by the sheriff, who is a legally qualified judge.
Sinking fund	A fund to which owners contribute to help save for future maintenance and repair costs.
Tenement	A building comprising two or more related flats that are owned or designed to be owned separately and which are divided from one another horizontally.
Tenement Management Scheme	The default management scheme that applies where there are gaps or defects in title deeds.

Title conditions	Rights and obligations over land inserted in deeds by owners of the land. For example, you might be allowed to use an access path but a condition of that use is that you help to maintain it.
Title deeds	A legal document that states who has the title or ownership of a property, gives details of the property and sets out the conditions that affect the property.

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About this guide

Anyone who owns a home knows that they regularly need repair and maintenance. Good maintenance goes a long way to preventing costly repair work and Scottish councils now have greater powers to promote home maintenance. But who is responsible for maintenance and repairs when other people own part of the property?



If you live in a tenement, a high-rise block, a four-in-a-block or even a block of flats over a commercial property, you will be liable for maintenance and repair of the property's common parts like the roof, the close or stair, and the back green. So how do you find out what your responsibilities are – and what it takes to fulfil them? And how do you get all your neighbours to co-operate?

This guide tells you how Scottish property law affects your rights and responsibilities as flat owners. It also gives advice on what flat owners can do to put the requirements of the new legislation into practice to protect the value of their home. Parts of this guide are also relevant to owners of houses.

A fuller online version of this guide can be found at www.consumerfocus-scotland.org.uk.