

## A FAIRER DEAL FOR MODERN LIVING

A FINE GAEL POLICY  
ON MANAGEMENT COMPANIES  
& MANAGEMENT AGENTS

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# **A Fairer Deal for Modern Living**

**A Fine Gael policy on management companies and management agents**

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## Executive Summary

There are approximately 500,000 people living in apartments and mixed developments in Ireland today. Associated with these developments are the approximately 4,600 management companies and over 400 individuals or companies offering property management services.

There are many problems associated with this sector:

- Many home owners do not understand that they are shareholders in a management company, why this is necessary or that the management company of which they are a member and shareholder is not the same as the management agents who manage their block or estate.
- Control of management companies is not being handed over to their owners.
- Developers in control of a management company organising its AGM at a time and location where working residents would not be able to attend easily.
- In many cases, there are no sinking funds in place.
- Owners have no mechanism to seek redress when they are dissatisfied with service provision or the level of fees.
- There is no legal means of enforcing satisfactory completion of a development.
- Property management agents are unregulated and unlicensed.



### Fine Gael Proposals:

- The term 'Management Company' should be changed to 'Owners Company'.
- Fine Gael will enact legislation to:
  - Provide a clear legal definition of an 'Owners Company' setting out its core functions and a not for profit basis.
  - Require Owners Companies to plan ahead for five years when calculating their service charges.
  - Limit shareholding in Owners Companies to one share for each individual residence in the development.
  - Require Owners Companies to maintain a sinking fund.
- Immediately move to introduce legislation to put the National Property Services Regulatory Authority (NPSRA) on a statutory footing and include in legislation provisions to allow the NPSRA to regulate management companies.
- Service charges shall be determined by a professional quantity surveyor.
- Developers will be required to convey the title of the buildings and common areas to the Owners Company within one year of completion.
- Fine Gael would amend the Planning and Development Acts to:
  - Ensure that in mixed developments, apartment buildings shall not be included in the same Owners Company as traditional houses.
  - Require that where an Owners Company is established as a consequence of a new development, the extent of the area that will be taken in charge by the council shall be delineated clearly on a site layout drawing.
  - Section 180 shall be clarified to require councils to take in charge standard roads, footpaths, standard public lighting, non-landscaped large public open spaces, water, drainage and sewers on the request of an Owners Company.




## Introduction

Life and living in Ireland has gone through a lot of changes in recent years. The day when almost everyone lived in freehold house with a garden is gone. More and more people are living in apartments or high-density developments containing a mix of houses, duplexes and apartments. In the past, most apartment dwellers were local authority tenants. Today, the vast majority of apartments are privately owned either by their owner-occupiers or by private landlords.

In 2005, more than half of all dwellings built in Dublin city and county were apartments (53%). Many other counties are not far behind; Limerick (25%), Kildare (22%), Wicklow (22%), Louth, Galway and Cork (18%). The 2002 Census showed that 210,656 people lived in 110,458 apartments. Today there are approximately 303,000 apartments in Ireland. It is expected that the 2006 Census will reveal that almost 500,000 are now living in multi-unit developments. Perhaps 50,000 to 100,000 more live in traditional houses located in mixed developments and are also subject to management charges.

Currently, there are 4,600 management companies registered with the CRO and there are approximately 400 individuals or companies offering property management services.

In Ireland, there is no primary legislation governing the establishment and operation of management companies. Management agents are the only professionals who hold money in trust but do not need a licence. They are totally unregulated. This is at odds with most western democracies where the property sector is heavily regulated.



Over the past few years, it has become apparent that there are a lot of problems with management companies and management agents. Above all, residents and owners of dwellings that are controlled by management companies rarely understand why they need a management company, how it works, that they own it or what their rights and obligations are. Few seem to understand the difference between the , management company in which they are a shareholder and the management agent hired to look after their apartment block or estate. In many places, the management company is still controlled by the developer, owners are powerless, services are poor, fees are not paid, the title to common areas is not being handed over to the management company, there is no sinking fund, the management company is in considerable debt or has even been struck off the companies register thus leaving the residential units unprotected, uninsured and unsaleable.

Fine Gael believes that the time has come for primary legislation to govern management companies so that the rights of residents and homeowners can be defined, assured and protected. The Government has not delivered on its programme commitment to bring forward such legislation.

Fine Gael notes the recently published National Consumer Agency (NCA) Report, the position paper prepared by the Company Law Review Group (CLRG), the report by the Law Reform Commission (LRC), the report of the Auctioneering/Estate Agency Review Group, the report of the Private Housing Unit of Dublin City Council and Fingal County Council's policy on management companies and taking-in-charge and recommendations for legislative reform.




## The Need for Management Companies

Multi-unit developments, by their nature, contain common areas, which are accessible to everyone who occupies the building, their invitees and licensees. The common areas in a private development of self-contained individual houses would relate solely to the external areas, such as the green open spaces and car parking areas around the development. In the case of a multi-unit development, however, the common areas comprise both external common areas and internal common areas. Typically, these would include the lobbies, halls, stairwells, lift, corridors and the roof. It would also invariably include the central heating apparatus such as the boiler and, in essence, the entire structures of the individual apartments. Thus the owners share collectively the common areas and will have certain rights, obligations and duties in regard to them.

The need for a management company structure therefore arose in order to 'manage' all of the common parts and services within a complex, not belonging to, or the responsibility of a single person. The management company is responsible for maintaining the structures in good order and repair and, particularly in the case of apartments, having usually expensive lift apparatus, providing for a contingency or sinking fund to cover the substantial cost of repair or renewal over time.

In the case of such collective ownership a 'management company' is the means by which the owners take responsibility for maintenance and services and for ensuring that the buildings in the complex and the common areas are maintained to a high standard for the benefit of all concerned. Thus an individual apartment owner has two legal interests in his property: as the legal owner of his dwelling unit and as a part owner of the management company which owns the freehold. The management company also serves to protect the owners' freehold interest.




The management company is invariably a company limited by guarantee and incorporated under the Companies Act 1963 - 2005. The full responsibilities of the management company are outlined in the company's Memorandum and Articles of Association and in the agreement between the management company and the developer, following the transfer of the common areas. This would be underpinned by the management company's obligations in the lease.

A key decision to be made by the members of the management company concerns whether to manage the building themselves or whether to appoint a professional management agent to undertake full responsibility for the routine day-to-day management of the company and other related issues as they arise.

### **The Application of Management Companies to Traditional Housing**


In recent years, this matter has been further complicated by the large-scale development of housing complexes containing both traditional houses and apartments. In some cases, a management company is established for the apartments only. In other cases, the management company covers both the houses and apartments. In some places, management companies have even been applied to developments that consist solely of houses. These usually take the form of high-end residential developments or 'gated estates'.

In the latter, this has not led to many problems. However, in mixed developments, there has been a large level of resentment on the part of the people living in houses that they have to pay charges. These residents feel that they should not have to be members of a management company and should not have to pay management fees when these are not paid by residents of similar houses in other developments. In many cases, they are paying several hundred euros per annum for little more than grass-cutting and landscaping that they do not want or could easily do for themselves.



## The Problems with Management Companies in a Residential Development

- There is a lack of understanding by owners and tenants of the various types of entities which exist in the property management sector, and of the legal responsibilities and obligations associated with the purchase of dwellings in multi-unit complexes. Some do not understand that they are shareholders in a management company, why this is necessary or that the management company of which they are a member and shareholder is not the same as the management agents who manage their block or estate. Many people feel that they signed up to management companies without realising what they were doing or believe that they were not properly advised by their solicitor or estate agent.
- Control of management companies is not being handed over to their owners. Developers stay on as directors for many years preventing the owners from electing their own directors through clauses included in the memorandum and articles of association (eg. preventing an election until all units are sold or giving the builder one thousand votes).
- Developers are failing to hand over legal title to the common areas despite charging fees for their maintenance. Often developers seek to hang on to title in the hope of future development or in anticipation of necessary way-leaves for development on adjoining sites
- Developers still in control of management companies sometimes organise annual general meetings at a time and location where most residents would never be able to attend due to work or life commitments.
- In many cases, there is no sinking fund in place. Sinking funds are built up over a number of years to cover the cost of large outlays such as structural repairs, plumbing, rewiring etc.

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- It is often unclear what will and will not be taken-in-charge by the local authority. As a result, it is unclear what the maintenance responsibilities of the developer are versus the responsibilities of the management company. For example, if a road within a development is due to be taken in charge by the council, repairs and maintenance are the responsibility of the developer until it is taken in charge. If the road is not to be taken in charge, it is the responsibility of the management company and the costs of maintenance must be raised through management fees.
  - Owners have no mechanism to seek redress when they are dissatisfied with service provision or the level of fees. It is not reasonable to expect owners to go to law every time they have a complaint.
  - There is no legal means of enforcing satisfactory completion of a development. Indeed the definition of 'satisfactory completion' is open to considerable interpretation. The key issue is more to do with how to ensure that the developer completes the development or individual phases of his development within the terms and conditions of, and to the standards set down in, his planning permission.
  - No entity has the authority to review the level of fees.
  - Property management agents are unregulated and unlicensed. Anyone may establish themselves as a property management agent whether or not they have the knowledge, qualification or skills to run a company, hold money in trust or manage a large building.
  - Management company accounts are audited independently. However, these audits are arranged by the property management agents who often group them into a single contract. In some cases, auditors are getting an unacceptably large amount of business from one agent though, officially, they are auditing hundreds of different companies. This creates a significant conflict of interest for the auditors.



## Fine Gael's Proposals


### A Fresh Start

The term 'Management Company' should be changed to 'Owners Company'. This will eliminate the confusion between management companies and agents and emphasise to residents that it is a company made up of owners of units in the development. It will also signify a new beginning.

### Company Law Reform

Fine Gael will enact legislation to regulate the establishment and operation of management companies on the following lines:

- A clear legal definition of an 'Owners Company' setting out its core functions and a not-for-profit basis. The core functions shall include: the establishment of a sinking fund, insuring any buildings other than houses, the setting up of a bank account, the setting and collection of services charges, the appointment of a management agent, maintenance and repairs to common areas and the provision of services such as heating, lighting and cleaning.
- Owners Companies shall be required to plan ahead for five years when calculating their service charges. This would protect and inform the consumer.
- Shareholding in Owners Companies shall be limited to one share for each individual residence in the development.

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- Should one person (including a legal person) gain a controlling interest in an Owners Company by way of ownership of the majority of the residences, the legislation shall provide a safeguard against that person acting to impose unreasonable or oppressive conditions on the other shareholders by way of excessive annual charges, restrictive covenants or the like. This safeguard shall be further strengthened through the threat of legal sanction if this principle is proven to be breached through persons acting on behalf of a person, thereby giving that person an effective controlling interest and thereby exercising such an excessive control.
  - Owners Companies shall be required by law to maintain a sinking fund. The means of calculation of the amount of this fund shall be set out in the legislation and that the calculation in every instance shall be freely available to all shareholders and those to whom any residence in the development is offered for sale as part of the conveyance of that property.
  - While it makes sense that the Owners Company should be controlled by the developer during the construction phase, control shall be transferred to the legitimate shareholders/owners within six months of the certificate of completion being issued at which point directors shall be elected.



### **The National Property Services Regulatory Authority (NPSRA)**

The National Property Services Regulatory Authority (NPSRA) should be established on statutory basis as a matter of urgency. In addition to the regulation and licensing of all trading entities providing auctioneering, estate agency, property letting and property management, it should also be given responsibility for the regulation of Owners Companies.

- The NPSRA shall draw up a code of practice for Owners Companies and management agents.
- Owners and tenants shall have the right to make complaints to the NPSRA relating to the operation of the Owners Company or the service provided by the management agents. The NPSRA shall adjudicate on these complaints and issue a recommendation.
- Owners shall have the right to challenge the level of the management fee to the NPSRA.
- All Property management agents shall be required to have a licence and professional indemnity. They will be required by law to disclose any commissions or discounts to the members of 'owners companies'. It shall be an offence to provide property management services without a licence.




### Fair Service Charges

- Service charges shall be determined by a professional quantity surveyor following consideration of the drawings, mechanical and electrical services, and the obligations regarding services generally set down in the lease between the buyer and the developer. The determination of service charges shall be simple, reasonable and fair, in the interest of good estate management. In the case of mixed multi-unit developments comprising different dwelling types, it is recommended that, where elements clearly and unquestionably are only attributed to the apartment block, they should be excluded from the calculation of the service charge for other units in the development, which should be costed separately. In the case of a dispute over service charges, the Regulatory Authority should have the powers to deal with disputes in the case of owners. When there is no resolution, the dispute should be referred to the Court to justify the charges sought.

### Transfer of Title

Developers will be required to convey the title of the buildings and common areas to the management company within one year of completion. The developer shall be required to attend to a snag list prepared by an inspector appointed by the local authority who shall furnish a completion certificate. This certificate shall confirm that the inspector is satisfied that the common areas and other cosmetic finishes are completed in accordance with the developer's obligation under the lease. This must be done within three months from the date of completion of the last unit within the development. Developers who fail to comply may lose their bond or be subject to fines levied by the local authority.



Prior to the granting of the completion certificate, the developer shall be responsible for the maintenance, insurance and provision of service to the building. During this period, the service charge shall go in its entirety into the sinking fund. This will create an incentive for developers to complete and hand over development in a timely manner, will ensure that the Owners Company is not in debt when it is handed over and that a sinking fund is in place


### **Obligations of Solicitors**

Solicitors will be made responsible for ensuring that buyers are fully aware of and understand the consequences of becoming a member of an Owners Company. Buyers will be furnished with a booklet (possibly prepared by the National Consumer Association, PRSA or Society of Chartered Surveyors) containing relevant information for potential buyers.

### **Planning and Development Act**

The Planning and Development Act will be amended to require:

- that where an Owners Company is established as a consequence of a new development, the extent of the area that will be taken in charge by the council shall be delineated clearly on a site layout drawing, complete with accompanying descriptions, that will form part of the planning application documentation
- that in mixed developments, apartment buildings shall not be included in the same 'owners corporation' as traditional houses

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- Section 180 shall be clarified to require councils to take-in-charge standard roads, footpaths, standard public lighting, non-landscaped, large, public open spaces, water, drainage and sewers on the request of an Owners Company. This shall not apply to 'gated developments'.

### **A Professional Body for Management Agents & Quango Consolidation**

A professional body should be established representing residential management agents, similar to ARMA in the United Kingdom, to create awareness amongst the property sector as well as national and local government of the role of professional management agents. In line with Fine Gael policy this body should exist under the auspices of the National Property Services Regulatory Authority (NPSRA).

In addition the Private Residential Tenancies Board (PRTB) should be merged with the new National Property Services Regulatory Authority (NPSRA). This new regulatory authority will then become a single overarching body for those in the property sector. It will become the first port of call for all who have grievances with services charges, management agents, owner companies and rental agreements.

