



AN BILLE UM FHORBAIRTÍ ILAONAD 2009
MULTI-UNIT DEVELOPMENTS BILL 2009

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Conditions relating to sale of units in multi-unit developments.
3. Transfer of common areas in cases where *section 2* does not apply.
4. Obligation of developer to transfer ownership of common areas of completed developments to owners' management company.
5. Obligations to complete development to remain with developer.
6. Automatic transfer of membership of owners' management company on sale of unit.
7. Consequences of transfer of common areas.
8. Transfer of ownership of parts of a multi-unit development.
9. Determination of certain beneficial interests on completion of development.
10. Determination of certain beneficial interests in common areas in certain cases.
11. Right of management company to effect essential repairs.
12. Structure of certain owners' management companies.
13. Annual meetings and reports of owners' management companies.
14. Annual service charges.
15. Sinking fund.
16. Owners' management company annual charges.

[No. 32 of 2009]

17. House rules.
18. Dispute resolution and rehabilitation of multi-unit developments.
19. Persons who may apply under *section 18*.
20. Jurisdiction and venue of Circuit Court.
21. Mediation conferences.
22. Report of chairperson of mediation conference.
23. Saver for existing jurisdictions.
24. Restoration of certain companies to register.
25. Transfer of benefit of guarantees and warranties.
26. Restriction on entering into certain contracts.
27. Exercise of power to make regulations.
28. Short title and commencement.

SCHEDULE

PROVISIONS OF THIS ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS COMPRISING 2 OR MORE UNITS BUT LESS THAN 5 UNITS

ACTS REFERRED TO

Building Control Acts 1990 and 2007	
Companies (Amendment) Act 1982	1982, No. 10
Companies Act 1963	1963, No. 33
Companies Acts	
Planning and Development Acts 2000 to 2007	



AN BILLE UM FHORBAIRTÍ ILAONAD 2009
MULTI-UNIT DEVELOPMENTS BILL 2009

BILL

entitled

5 AN ACT TO AMEND THE LAW RELATING TO THE
OWNERSHIP AND MANAGEMENT OF THE COMMON
AREAS OF MULTI-UNIT DEVELOPMENTS AND TO
FACILITATE THE FAIR, EFFICIENT AND EFFECTIVE
10 MANAGEMENT OF BODIES RESPONSIBLE FOR THE
MANAGEMENT OF SUCH COMMON AREAS, AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1963” means the Companies Act 1963;

15 “Act of 1982” means the Companies (Amendment) Act 1982;

“common areas” means those parts of a multi-unit development designated, or which it is intended to designate, as common areas and including where relevant access and side roads, architectural features, circulation areas, footpaths, internal common stairways, open
20 spaces, parking areas, utility rooms and that portion of the roof or exterior of any building not intended to form or not forming part of an individual unit;

“developer” means the person who carries out the development and construction of a multi-unit development;

25 “development stage” means the period which begins when the first unit to be made available for sale is so made available and ends after all construction works and ancillary works (including works on the common areas), for the multi-unit development have been completed and after certificates of compliance with all relevant planning
30 permissions under the Planning and Development Acts 2000 to 2007 and with the requirements arising under the Building Control Acts 1990 and 2007 have been issued;

“member” means member of an owners’ management company;

“Minister” means Minister for Justice, Equality and Law Reform;

“multi-unit development” means land on which there stands erected a building which, or a part of which, subject to *subsection (3)*, is divided into units of which not less than 5 are designed and intended for residential use;

“owners’ management company” means, subject to *subsection (4)*, a company established for the purposes of becoming the owner of the common areas of a multi-unit development and the management, maintenance and repair of such areas and which is a company registered under the Companies Acts; 5

“relevant parts” means those parts of the common areas of a multi-unit development which— 10

(a) are the subject of a request for a transfer of ownership to an owners’ management company, or

(b) have been the subject of a transfer of ownership to an owners’ management company; 15

“reversion” means the residue of ownership (if any) which continues in the transferor after the grant of any estate or leasehold interest in land;

“unit” means a unit in a multi-unit development designed for use and occupation as an apartment or flat or other dwelling or for non-residential (including commercial) use; 20

“unit owner” means a person other than the developer or the owners’ management company who holds the highest freehold or leasehold estate or interest in respect of a unit in a multi-unit development. 25

(2) In this Act—

(a) a unit in a multi-unit development shall not be considered as a unit intended for residential use unless the unit has self-contained facilities,

(b) a unit shall not be considered to have self-contained facilities unless the unit has within it, bathroom facilities and cooking facilities, for the exclusive use of the occupants of the unit concerned. 30

(3) Notwithstanding the definition of multi-unit development in *subsection (1)*, the provisions of this Act specified in the *Schedule* shall apply to a multi-unit development comprising 2 or more units but less than 5 units. 35

(4) In this Act a reference to an owners’ management company shall be construed, other than in the case of an owners’ management company to which *section 2* or *section 12* applies, as including a reference to an industrial and provident society and to a partnership or unincorporated body or group of persons owning the common areas of a multi-unit development, and in the case where such ownership is held by a partnership or unincorporated body or group of persons any of the persons in such partnership, body or group shall be entitled to enforce the covenants and house rules concerned. 40 45

(5) In this Act, save where the context otherwise requires, a reference to a transfer of ownership shall be construed as a reference to a deed of transfer, conveyance or assignment.

2.—(1) A person to whom this section applies shall not, after the coming into operation of this section, transfer his or her interest in a unit in a multi-unit development to which this section applies unless—

Conditions relating to sale of units in multi-unit developments.

5 (a) an owners' management company has been established at the expense of the developer of the multi-unit development concerned, and

10 (b) ownership of the relevant parts of the common areas of the multi-unit development and of any reversion in the unit being transferred has, subject to *subsection (6)*, been validly transferred by deed (or otherwise) to the owners' management company relating to that unit.

(2) This section applies to—

(a) a unit in a multi-unit development which—

15 (i) is intended primarily for residential use, and

(ii) has not previously been sold,

(b) a person, other than the owners' management company concerned, who is the owner of the entire common areas of a multi-unit development.

20 (3) The obligation, under this section, to transfer ownership of the common areas of a multi-unit development includes an obligation—

(a) to transfer any right of way or access and any other easements appurtenant to the land so transferred or necessary for the reasonable use and enjoyment of the said lands,

25 (b) to transfer all rights necessary to enable the unit owner or the owner of the transferred lands to enjoy the quiet and peaceful occupation of the unit in the multi-unit development,

30 (c) to transfer all necessary amenities intended to be available for use in conjunction with the ownership and occupation of the units in the multi-unit development.

(4) Without prejudice to *subsection (3)*, the developer shall do all things within his or her power which are reasonably necessary to ensure that the unit owner enjoys the rights referred to in that subsection.

(5) The developer shall ensure that the owners' management company established for the purposes of ownership and management of the common areas of a multi-unit development shall have all the powers necessary—

40 (a) to perform functions conferred or imposed on owners' management companies by this Act, and

(b) to exercise any powers conferred on such a company by this Act,

in relation to the multi-unit development concerned.

(6) The transfer, in compliance with this section, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest). 5

Transfer of common areas in cases where *section 2* does not apply.

3.—(1) Where, before the coming into operation of this section, the ownership of a unit in a multi-unit development has been the subject of a transfer by or on behalf of a developer to a purchaser, and the ownership of the relevant parts of the common areas and in the reversion relating to the units has not been transferred to the relevant owners' management company, the developer shall, subject to *subsection (2)*, arrange for the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned to an owners' management company within 6 months of the coming into operation of this section. 10 15

(2) Except where the multi-unit development has been completed, the transfer, in compliance with *subsection (1)*, of the ownership of the relevant parts of the common areas of a multi-unit development and in the reversion relating to the units concerned shall reserve the beneficial interest therein to the person transferring the ownership of those parts (including any mortgagee or the owner of a charge affecting any such beneficial interest). 20

Obligation of developer to transfer ownership of common areas of completed developments to owners' management company.

4.—Where, before the coming into operation of *section 3*, a multi-unit development has been substantially completed by or on behalf of the developer, and the ownership of the common areas has not been transferred to the owners' management company concerned, the developer shall within 6 months of such coming into operation arrange for the transfer of such ownership to the owners' management company concerned of the lands referred to in *section 2(1)(b)*. 25 30

Obligations to complete development to remain with developer.

5.—The transfer of the ownership of an interest in the relevant parts of the common areas of a multi-unit development shall not relieve the person who would otherwise have been responsible from the duty, obligation or responsibility to ensure completion of the development, including— 35

(a) compliance with the requirements or conditions of a planning permission under the Planning and Development Acts 2000 to 2007 which relates to the development concerned, and

(b) compliance with the Building Control Acts 1990 and 2007. 40

Automatic transfer of membership of owners' management company on sale of unit.

6.—(1) Where ownership of a unit in a multi-unit development is transferred, whether by conveyance, transfer, assignment, by operation of law or otherwise, membership of the owners' management company which arises by virtue of ownership of the unit shall, notwithstanding any provision to the contrary in the Companies Acts or any other enactment, on such transfer stand transferred to the person becoming entitled to the freehold or leasehold interest in the unit concerned without the need to execute a transfer or have it approved by the directors of the company, and such person shall— 45

(a) be entitled to exercise the powers, rights and entitlement of a member in the company concerned, and 50

(b) be obliged to perform all the obligations (including the payment of service charges) pertaining to the membership of such company concerned.

5 (2) Notwithstanding *subsection (1)* an owners' management company shall take all steps necessary to ensure—

(a) that the share certificate or membership certificate, as appropriate, is issued to the member concerned as soon as practicable following notification of the change of ownership of the unit,

10 (b) that the register of members of the company is altered accordingly, and

(c) that there is compliance with all other relevant requirements under the Companies Acts.

15 7.—(1) Where a transfer of the ownership of the relevant parts of the common areas of a multi-unit development is made in compliance with *sections 2, 3 or 4* then, notwithstanding any agreement, contract, deed, instrument or rule of law the developer shall retain the right to pass and re-pass and have access to such parts of the common areas as is reasonably necessary to enable the multi-unit development to be completed. Consequences of transfer of common areas.

25 (2) The developer shall indemnify the owners' management company in respect of all claims made against the company of whatever nature or kind in respect of acts or omissions by the developer in the course of works connected with the completion of the multi-unit development.

(3) The developer shall effect and keep in force a policy of insurance with an authorised insurer providing adequate insurance in respect of all risks in respect of the developer's use or occupation of the multi-unit development.

30 (4) Subject to *subsection (2)*, in exercising any rights or in discharging any obligations in relation to the multi-unit development (whether those rights or obligations arise under this Act or otherwise), the developer shall take all reasonable steps necessary to minimise inconvenience to the owners of the units in the multi-unit development.

(5) The developer shall ensure that access to the transferred land by owners of the units in the transferred lands and their servants, agents, tenants and licensees, is maintained at all reasonable times, and that such access is maintained in a clean and safe fashion.

40 (6) The owners' management company and unit owners shall not obstruct the developer—

(a) in exercising any rights in relation to the multi-unit development or adjacent land, or

45 (b) in discharging obligations pursuant to *section 5* in relation to the multi-unit development or adjacent land.

(7) References in this section to the developer shall be construed as including a reference to servants, agents and licensees of the developer.

(8) References in this section to a unit owner shall be construed as including a reference to servants, agents, tenants and licensees of the unit owner concerned.

Transfer of ownership of parts of a multi-unit development.

8.—(1) If ownership of an interest in or responsibility for the maintenance and management of a part of a multi-unit development is vested in or imposed on the unit owner in a multi-unit development and such part of the development is one the ownership of or responsibility for which is commonly held by an owners' management company, or comes within the definition of common areas in *section 1*— 5 10

(a) the unit owner concerned may by agreement transfer and the owners' management company concerned may by agreement accept, or

(b) the owners' management company concerned may by agreement transfer and the unit owner concerned may by agreement accept, 15

the transfer of the ownership of the interest in, or the transfer of responsibility for the maintenance and management of, the part concerned.

(2) Agreement by an owners' management company under *subsection (1)* shall not be given unless such agreement has been approved by a general meeting of the members of the company. 20

(3) Where a unit owner or an owners' management company of a multi-unit development considers that the other has, in relation to a matter referred to in *subsection (1)*, unreasonably withheld consent to such matter the aggrieved party may make an application to court under *section 18*. 25

Determination of certain beneficial interests on completion of development.

9.—(1) Where a multi-unit development has been completed the owner of any beneficial interest in the common areas and reversion in the units shall as soon as practicable thereafter make a declaration for the benefit of the owners' management company that as respects the development such beneficial interest stands extinguished. 30

(2) A declaration under *subsection (1)* shall be made with the consent of each mortgagee or owner of a charge in relation to the interest of the owner of the common areas and reversion in the units concerned which consent shall not be unreasonably withheld. 35

(3) Consent under *subsection (2)* shall not be treated as being unreasonably withheld where the mortgagee or owner of the charge makes the giving of such consent subject to a condition that the developer's interest in any unit which remains unsold be made subject to the granting of a mortgage or charge in favour of the mortgagee or owner of the charge. 40

Determination of certain beneficial interests in common areas in certain cases.

10.—(1) Where a multi-unit development has not been completed but the owners of 60 per cent of the units in a multi-unit development or a relevant part of the development request the beneficial owner of the development to make a declaration that such beneficial interest stands extinguished as respects the development or a relevant part of the development, the owner of such beneficial interest shall, unless good and sufficient cause is shown, make that declaration. 45 50

(2) A declaration under *subsection (1)* shall be made with the consent of each mortgagee or owner of a charge in relation to the interest of the beneficial owner of the common areas or reversion concerned which consent shall not be unreasonably withheld.

5 (3) Consent under *subsection (2)* shall not be treated as being unreasonably withheld where the mortgagee or owner of the charge makes the giving of such consent subject to a condition that the developer's interest in any unit in the development which remains unsold be made subject to the granting of a mortgage or charge in
10 favour of the mortgagee or owner of the charge.

(4) For the purposes of *subsection (1)* good and sufficient cause includes the reason that to do so would interfere in a material manner with the completion of the entire multi-unit development and that the interference could not be removed, overcome or resolved
15 in any other effective manner than by the beneficial interest in the development or relevant part of the development continuing to be retained by the developer.

(5) Where the unit owners in the development or a relevant part of the development do not accept that good and sufficient cause has
20 been shown as to why a declaration should not be made under *subsection (1)* the owners concerned may make application to the Circuit Court under *section 18* for an order directing that a declaration be made as respects the development or part of the development in respect of which the request was made under *subsection (1)* or such
25 other part of the development as the Court considers appropriate.

11.—(1) Where the effective maintenance or management of the common areas of a multi-unit development so require, the owners' management company shall have a right to carry out repairs or maintenance on a part of a relevant multi-unit development which is not
30 in their ownership or control where such repairs are reasonably necessary to ensure the safe and effective occupation or the peaceful enjoyment of occupation of any unit or units in the development, and such right shall include the right of access for such purposes to or through any part of the multi-unit development not in common
35 ownership.

Right of management company to effect essential repairs.

(2) Where expenditure is incurred pursuant to *subsection (1)* the owners' management company may recover such expenditure from any person (including the developer) who had responsibility for incurring such expenditure or carrying out the repairs and maintenance concerned.
40

12.—(1) The voting rights of members in an owners' management company to which this section applies shall be structured in such a manner that in the determination of any matter by the members of the company one vote shall attach to each unit owner in a multi-unit
45 development to which the owners' management company relates, and that no other person has such a vote.

Structure of certain owners' management companies.

(2) Each vote referred to in *subsection (1)* shall be of equal value.

(3) The words "owners' management company" shall be included in the name of every owners' management company to which this
50 section applies which words may be abbreviated to "OMC".

(4) This section applies to multi-unit developments in respect of which development works commenced after the enactment of this Act.

Annual meetings and reports of owners' management companies.

13.—(1) An owners' management company shall—

- (a) prepare and furnish to each member an annual report which complies with *subsection (2)*, 5
- (b) hold a meeting at least once in each year for purposes which include the consideration of the annual report referred to in *paragraph (a)*.

(2) An annual report of an owners' management company shall include: 10

- (a) a statement of income and expenditure relating to the period covered by the report;
- (b) a statement of the assets and liabilities of the company;
- (c) where the owners' management company is required to establish and maintain a sinking fund, a statement of the funds standing to the credit of that fund; 15
- (d) a statement of the amount of the annual service charge and the basis of such charge in respect of the period covered by the report; 20
- (e) a statement of the projected or agreed annual service charge relating to the current period;
- (f) a statement of any planned expenditure on the refurbishment, improvement or maintenance of a non-recurring nature which it is intended to carry out in the current period; 25
- (g) a statement of the insured value of the multi-unit development, the amount of the premium charged, the name of the insurance company with which the policy of insurance is held and a summary of the principal risks covered; 30
- (h) whether a Fire Safety Certificate has been issued in respect of the development and where members may obtain a copy of such certificate; and
- (i) a statement fully disclosing any contracts entered into or in force between the owners' management company and a director or shadow director of the company or a person who is a connected person as respects that director or shadow director. 35

(3) At least 21 days notice of the meeting referred to in *subsection (1)(b)* shall be given to each member. 40

(4) A copy of the annual report referred to in *subsection (1)(a)* shall be furnished to each member at least 10 days before the meeting referred to in *subsection (1)(b)*.

(5) The meeting referred to in *subsection (1)(b)* shall take place within reasonable proximity to the multi-unit development and at a 45

reasonable time (unless otherwise agreed by a 75 per cent majority vote of the members).

5 (6) The obligations of an owners' management company under this section are in addition to any other obligation or duty of such company whether arising under an Act, statutory instrument, by rule of law or otherwise.

10 **14.—(1)** An owners' management company shall, as soon as practicable, establish and maintain a scheme in respect of annual service charges from which the owners' management company may discharge ongoing expenditure reasonably incurred on the insurance, maintenance (including cleaning and waste management services) and repair of the common areas of the multi-unit development concerned and on the provision of common or shared services to the owners and occupiers of the development.

15 (2) The annual service charge in respect of a multi-unit development relating to a particular period shall not be levied unless it has been considered by a general meeting of the members concerned called for purposes which include the consideration of an estimate of the expenditure it is anticipated will be incurred by the company in that period and the meeting shall take place within reasonable proximity to the multi-unit development and at a reasonable time (unless otherwise agreed by a 75 per cent majority vote of the members).

(3) The estimate referred to in *subsection (2)* shall be broken down into the following categories:

- 25 (a) insurance;
- (b) general maintenance;
- (c) repairs;
- (d) waste management;
- (e) cleaning;
- 30 (f) gardening and landscaping;
- (g) concierge and security services;
- (h) legal services and accounts preparation; and
- (i) other expenditure arising in connection with the maintenance, repair and management of the common areas anticipated to arise.
- 35

(4) (a) The proposal in relation to the setting of an annual service charge may be amended at the meeting referred to in *subsection (2)* with the approval of 60 per cent of those present and voting at the meeting.

40 (b) Where the service charge proposed to the general meeting is disapproved by not less than 75 per cent of the persons attending and entitled to vote, the proposed service charge shall not take effect but the charge applying to the previous period shall continue to apply pending the adoption of a service charge in respect of the period concerned.

45

(5) Where the proposed service charge is disapproved pursuant to *subsection (4)* and no service charge applied in the previous period the directors of the owners' management company may determine a scheme to operate for a period of 4 months from the date of the meeting, and such charges may be levied and recovered as if such scheme had been approved by the members. 5

(6) Service charges levied under this section may not be used to defray expense on matters which are or were the responsibility of the developer or builder of the multi-unit development concerned unless such expenditure is approved by a general meeting of the owners' management company concerned where 90 per cent of those attending and entitled to vote have voted in favour of such expenditure being incurred. 10

(7) An approval under *subsection (6)* shall not have effect unless— 15

(a) at least 65 per cent of the units in the development have been transferred to a person who is not a connected person as respects the person who was—

(i) the developer or builder of the multi-unit development concerned, or 20

(ii) a director or shadow director of a company which was the developer or builder of the development,

and

(b) at least 3 years have elapsed since the transfer of the ownership of the relevant parts of the common areas of the multi-unit development concerned. 25

(8) Where expenditure is incurred following an approval under *subsection (6)* the owners' management company may recover such expenditure from any person (including the developer) who had responsibility for incurring such expenditure or carrying out the works concerned. 30

(9) The owner of each unit in a multi-unit development (including a person who is the developer or building contractor of the development) shall be under an obligation to pay all service charges levied under this section. 35

(10) Nothing in this section shall operate to prevent a unit owner from seeking and recovering reimbursement of service charges levied under this section from a tenant of that owner where so provided by agreement.

(11) The annual service charge shall be calculated on a transparent basis and shall be equitably apportioned between unit owners. 40

(12) (a) The owners' management company in setting the annual service charge shall do so by reference to the actual or projected expenditure for the year in respect of which the same is levied. 45

(b) To the extent that any part of the service charge levied is not required for the year concerned any excess shall be taken account of in setting the service charge for the following year.

(c) To the extent that the service charge is inadequate for the expenditure in the year concerned the extent of such inadequacy may be added to the service charge otherwise payable in respect of the following year.

5 (13) An owners' management company shall maintain sufficient and proper records of expenditure incurred by it to enable appropriate verification and audits to be undertaken.

10 (14) Service charges levied pursuant to this section shall be applied for the purposes specified in *subsection (1)* but any excess may, notwithstanding *subsection (12)*, be applied on expenditure which may be incurred by the sinking fund established pursuant to *section 15*.

15 (15) The Minister may, for the purpose of advancing the objective of the fair, effective and efficient operation of owners' management companies and the fair, efficient and effective management of the common areas of multi-unit developments, make regulations prescribing the class or classes of items of expenditure which may be the subject of annual service charges, the procedures to be followed in setting such charges and matters to be taken into account in the
20 setting of such charges, and arrangements for the levying and payment of such charges.

15.—(1) An owners' management company shall establish a building investment fund (in this section referred to as a "sinking fund") for the purpose of discharging expenditure reasonably incurred on—

25 (a) the refurbishment,
(b) improvement,
(c) maintenance of a non-recurring nature, or
(d) advice from a suitably qualified person relating to *paragraphs (a) to (c)*,
30 of the multi-unit development in respect of which the owners' management company stands established.

(2) Expenditure shall not be considered to be expenditure on maintenance of a recurring nature unless—

35 (a) the expenditure relates to a matter in respect of which expenditure is generally incurred in each year,
(b) it is certified by the directors of the owners' management company concerned as being expenditure on maintenance of a recurring nature, and
40 (c) the expenditure is approved by a meeting of the members of the owners' management company as being expenditure on maintenance of a recurring nature.

(3) Each unit owner in a multi-unit development shall be obliged to make payment to the sinking fund of the amount of contribution fixed in respect of the unit concerned in accordance with this section.

45 (4) Subject to *subsections (5) and (6)* the contribution to be made by the unit owner in a multi-unit development to the sinking fund in a particular year shall be made on the same basis as the contribution

to be made by such unit owner in respect of the annual service charges relating to the unit concerned.

(5) Subject to *subsection (6)* the amount of the contribution to be paid as respects a unit by each unit owner of such a unit to the sinking fund in respect of a particular year shall be the amount of €200 or such greater amount as may be agreed by a meeting of the members as the contribution in respect of the year concerned. 5

(6) The obligation to establish a sinking fund and to make contributions to such fund shall apply on the happening of the later of—

(a) the passing of a period of 3 years since the first transfer of the ownership of a unit in the multi-unit development concerned, or 10

(b) the passing of a period of 18 months since the coming into operation of this section.

(7) The contributions made to the sinking fund shall be held in a separate account and in a manner which identifies these funds as belonging to the sinking fund and such funds shall not be used or expended on matters other than expenditure of a type referred to in *subsection (1)*. 15

(8) The owner of a unit in a multi-unit development shall be under an obligation to pay the contributions to the sinking fund determined in accordance with this section. 20

(9) Where a dispute arises in relation to whether assets of an owners' management company should properly be applied to the sinking fund account or the annual service charges account the dispute may be the subject of an application under *section 18*. 25

(10) The Minister may, for the purpose of advancing the objective of the fair, prudent, effective and efficient operation of owners' management companies and the fair, prudent, efficient and effective management of the common areas of multi-unit developments, make regulations prescribing— 30

(a) a class or classes of expenditure which may be incurred by a sinking fund,

(b) the procedures to be followed in setting such charges,

(c) the matters to be taken into account in the setting of such charges, 35

(d) the arrangements for the levying and payment of such charges, and

(e) the thresholds of expenditure (by reference to amounts of expenditure or by reference to the proportion of the sinking fund) which necessitate approval of the members of the owners' management company. 40

Owners' management company annual charges.

16.—(1) An owners' management company may issue a single request for payment of the aggregate of the charges arising under *sections 14* and *15*, and every request for payment, whether in reliance on this section or on *section 14* or *15* shall set out the basis of the calculation of the charge, a breakdown of how it is calculated and the amount payable in respect of the unit concerned. 45

(2) Where payment of charges arising under *sections 14 and 15* are requested or collected together such charges may collectively be referred to as “owners’ management company annual charges”.

5 **17.—(1)** An owners’ management company may, as respects the multi-unit development for which that company has responsibility, make house rules as respects the development relating to the effective operation and maintenance of the development and with the objective of enhancing the quiet and peaceable occupation of units generally in the development, and such house rules shall be binding on unit owners, their tenants, and servants, agents and licensees of unit owners and their tenants. House rules.

(2) House rules made pursuant to *subsection (1)* shall be consistent with the covenants and conditions contained in—

15 (a) the documents of title under which unit owners in the multi-unit development concerned have title to the units concerned, and

(b) the documents of title under which the owners’ management company concerned has title to the multi-unit development concerned.

20 (3) House rules made under *subsection (1)* shall be made in a manner consistent with the objective of advancing the quiet enjoyment of the property by the owners of units in the development.

25 (4) House rules shall not be made under this section unless the rules have been considered and approved by a meeting of the unit owners in the development.

(5) Notice of a meeting referred to in *subsection (4)* shall be given to each unit owner not less than 21 days prior to the meeting.

30 (6) The notice of the meeting to consider the making of house rules under this section shall be accompanied by a draft of the proposed rules.

(7) Following the approval of rules under this section the owners’ management company shall furnish a copy of the rules to each owner and shall also send a copy to each unit in the development.

35 (8) It shall be a term of every letting of a unit in a multi-unit development that the letting is subject to the observance by all those occupying the property (including their licensees, servants or agents), in whatever capacity, of—

(a) the conditions and covenants in the title documents relating to the use and enjoyment of the property, and

40 (b) house rules made under this section,

and a summary of such relevant conditions and covenants together with a copy of any house rules shall be incorporated into the letting agreement relating to the unit concerned.

45 (9) Where a person, who by reason of *subsection (1)* is obliged to comply with house rules, commits a material breach of such rules, the owners’ management company of the development concerned may recover the reasonable costs of remedying such breach from

such person which costs may be recovered as a simple contract debt in a court of competent jurisdiction.

(10) The Minister may make regulations relating to—

(a) the making of house rules, and

(b) the matters to which they may relate.

5

Dispute resolution
and rehabilitation
of multi-unit
developments.

18.—(1) A person specified in *section 19* may make, in respect of a multi-unit development, an application to the court for an order under this section to enforce any rights conferred, or obligation imposed, by this Act or any rule of law.

(2) An application under this section shall state the circumstances giving rise to the application and the order or orders that the applicant invites the court to make and whether or not mediation has been attempted.

10

(3) Where the court is satisfied that a right has been infringed or an obligation has not been discharged, it shall make such remedial order as it deems appropriate in the circumstances with a view to ensuring the effective enforcement of a right or the effective discharge of an obligation relating to the multi-unit development.

15

(4) Notwithstanding the generality of *subsection (3)*, an order under that subsection may include an order:

20

(a) that the legal documentation relating to the owners' management company be amended;

(b) in the case of a multi-unit development consisting of more than one structure, to provide that, where an issue relating to one structure only in the multi-unit development arises, only the unit owners in that structure shall have the right to be consulted and vote on the issue;

25

(c) in the case of a development with more than one owners' management company, that a single owners' management company be formed to replace the existing owners' management companies;

30

(d) apportioning the funds of an owners' management company as between its sinking fund and its service charges;

(e) amending the covenants contained in an agreement (including a lease) between the developer, owners' management company and the unit owners;

35

(f) approving a proposal to enable an owners' management company—

(i) deal with a debt, whether caused by an inadequacy in, or the absence of, a sinking fund, and

40

(ii) any issues arising therefrom in relation to the future management of the owners' management company;

(g) transferring control of an owners' management company from a developer to the unit owners, where the court is satisfied the developer has unreasonably refused to effect the said transfer;

45

(h) directing the developer of a multi-unit development to complete the multi-unit development in accordance with a relevant planning permission under the Planning and Development Acts 2000 to 2007 or under any contract;

5 (i) directing a unit owner or a minority of unit owners to cooperate with decisions made by a majority of the unit owners in the development.

(5) Before making an order pursuant to this section the court shall be satisfied that all parties likely to be affected by the making of the order have received notice of the making of the application (unless the court has dispensed with the giving of such notice or deemed service of the notice good) and the court shall be satisfied that in all the circumstances, it is just to do so.

15 (6) (a) The court may make such ancillary orders as it considers necessary in order to give effect to any order or orders made by it under *subsection (3)*.

(b) Where—

20 (i) a person is directed by an order under *subsection (3)* or this subsection to execute a deed or other instrument in relation to land, and

(ii) such person refuses or neglects to comply with the direction, or

(iii) for any other reason, the court considers it necessary to do so,

25 the court may order another person to execute the deed or instrument in the name of the first-mentioned person and a deed or other instrument executed by a person in the name of another person pursuant to such an order shall be as valid as if it had been executed by that other person.

19.—(1) The following persons may apply for, or appear and be heard at an application for, an order under *section 18*: Persons who may apply under *section 18*.

35 (a) the owners' management company relating to the relevant multi-unit development or a part of the relevant multi-unit development;

(b) any member of such an owners' management company;

(c) any trustee under a will, settlement or other disposition of land by such member;

(d) the developer of the multi-unit development;

40 (e) with the permission of the court, such other person as the court sees fit.

(2) A person referred to in *paragraph (e)* of *subsection (1)* shall apply for permission to make an application, or to appear and be heard at an application, for an order under *section 18*, as the case may be, in a summary manner and shall include in such application for permission the reasons why such permission should be granted.

Jurisdiction and venue of Circuit Court.

20.—(1) The Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine an application under *section 18*.

(2) The jurisdiction conferred on the Circuit Court by this Act may be exercised by the judge of the circuit in which the relevant multi-unit development or any part thereof is situated. 5

Mediation conferences.

21.—(1) (a) Upon the request of any party to an application under *section 18*, the court may at any stage during the course of the proceedings (including immediately after the issue of the proceedings), if it considers that the holding of a meeting pursuant to a direction under this subsection would assist in reaching a settlement of the matter, direct that the parties to the application meet to discuss and attempt to settle the matter. 10

(b) A meeting held pursuant to a direction under this subsection is in this Act referred to as a “mediation conference”. 15

(2) Where the court gives a direction under *subsection (1)*, each party to the application concerned shall comply with that direction.

(3) A mediation conference shall take place— 20

(a) at a time and place agreed by the parties to the application concerned, or

(b) where the parties do not agree a time and place, at a time and place specified by the court.

(4) There shall be a chairperson of a mediation conference who shall— 25

(a) be a person appointed by agreement of all the parties to the application concerned, or

(b) where no such agreement is reached—

(i) be a person appointed by the court, and 30

(ii) (I) be a practising barrister or practising solicitor of not less than 5 years standing, or

(II) a person nominated by a body prescribed, for the purpose of this section, by order of the Minister.

(5) The notes of the chairperson of a mediation conference and all communications during a mediation conference or any records or other evidence thereof shall be confidential and shall not be used in evidence in any proceedings whether civil or criminal. 35

(6) The costs incurred in the holding and conducting of a mediation conference shall be paid by such party to the application concerned as the court hearing the action shall direct. 40

Report of chairperson of mediation conference.

22.—(1) A person appointed under *section 21(4)* to be the chairperson of a mediation conference shall prepare and submit to the court hearing the application under *section 18* a report, which shall set out— 45

(a) where the mediation conference did not take place, a statement of the reasons as to why it did not take place, or

(b) where the mediation conference did take place—

5 (i) a statement as to whether or not a settlement has been reached in respect of the application, and

(ii) where a settlement has been entered into, a statement of the terms of the settlement signed by the parties thereto.

10 (2) A copy of a report prepared under *subsection (1)* shall be given to each party to the application at the same time as it is submitted to the court under that subsection.

(3) At the conclusion of the hearing of an application under *section 18*, the court may—

15 (a) after hearing submissions by or on behalf of the parties to the application, and

(b) if satisfied that a party to the application failed to comply with a direction under *section 21(1)*,

20 make an order directing that party to pay the costs of the application, or such part of the costs of the application as the court directs, incurred after the giving of the direction under *section 21(1)*.

25 **23.**—Nothing in this Act shall be taken to derogate from any power which may, whether before or after the passing of this Act, be vested in any person or court, by statute or otherwise, and the powers conferred by this Act shall be in addition to, and not in substitution for, such other powers. Saver for existing jurisdictions.

24.—(1) Where a company to which this section applies has been struck off the register in accordance with— Restoration of certain companies to register.

(a) section 311 of the Act of 1963, or

30 (b) section 12 of the Act of 1982,

35 then, without prejudice to the provisions of section 311(8) or 311A(1) of the Act of 1963 or subsection (3) or (7) of section 12B of the Act of 1982, if a member or officer of a company is aggrieved by the fact of the company having been struck off the register under section 311 of the Act of 1963 or section 12 of the Act of 1982 the registrar of companies, on an application made in the prescribed form by the member or officer before the expiration of 6 years from the publication in *Iris Oifigiúil* of the notice that the company was struck off the register, provided that the registrar has received all annual returns outstanding, if any, from the company, may restore the name of the company to the register.

45 (2) Upon the registration of an application under *subsection (1)* and on payment of such fees as may be prescribed, the company shall be deemed to have continued in existence as if its name had not been struck off.

(3) This section applies to a company—

(a) which is an owners' management company, and

(b) which immediately prior to the name of the company having been struck off the register pursuant to section 311 of the Act of 1963 or section 12 of the Act of 1982 had vested in it ownership of the common areas or a part thereof of the multi-unit development in respect of which the company was incorporated. 5

(4) Each application pursuant to *subsection (1)* shall be accompanied by a certificate from a solicitor or an accountant certifying that the company is an owners' management company operating as such. 10

Transfer of benefit of guarantees and warranties.

25.—Notwithstanding any agreement to the contrary, where a person develops a multi-unit development the benefit of any warranty or guarantee relating to any materials used in the construction, repair or improvement of a multi-unit development or plant, machinery or equipment installed in the multi-unit development shall stand transferred to the owners' management company concerned without any requirement for the giving of a notice of assignment to any person for the benefit of the unit owners in the development. 15
20

Restriction on entering into certain contracts.

26.—An owners' management company shall not, after enactment of this Act, enter into a contract for the provision of a service or the purchase of goods—

(a) which is expressed to run for a period in excess of 3 years from the date the contract is entered into by the owners' management company, or 25

(b) which provides for a penalty to be imposed on or damages to be paid by the owners' management company if the contract is terminated by it after a period of 3 years from the date the contract is entered into by the owners' management company. 30

Exercise of power to make regulations.

27.—Before making regulations under *sections 14, 15 or 17*, the Minister shall consult with the Minister for Enterprise, Trade and Employment and the Minister for the Environment, Heritage and Local Government. 35

Short title and commencement.

28.—(1) This Act may be referred to as the Multi-Unit Developments Act 2009.

(2) This Act, other than *sections 12 and 26* shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions. 40

PROVISIONS OF THIS ACT WHICH APPLY TO MULTI-UNIT DEVELOPMENTS
COMPRISING 2 OR MORE UNITS BUT LESS THAN 5 UNITS

- 5 1. Section 13 (Annual meetings and reports of owners' management companies).
2. Section 14 (Annual service charges).
3. Section 15 (Sinking fund).
4. Section 17 (House rules).
- 10 5. Section 18 (Dispute resolution and rehabilitation of multi-unit developments).
6. Section 19 (Persons who may apply under *section 18*).
7. Section 20 (Jurisdiction and venue of Circuit Court).
8. Section 21 (Mediation conferences).
9. Section 22 (Report of chairperson of mediation conference).