



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

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

Multi-unit developments (MUDs), and the property management companies which own and manage the internal and external common areas of such developments, are of relatively recent origin in Ireland. The rapid increase in their number in recent times has exposed weaknesses in the statutory framework within which they operate (which was not in any event designed with them in mind).

Problems have arisen in relation to when the company must be established; the timing of the transfer to it of ownership of the common areas; the governance arrangements within the company; whether or not to establish a sinking fund; the calculation and payment of service charges by unit owners; the enforcement of covenants and house rules; the strike-off of companies for non-compliance with statutory reporting requirements; and the resolution of disputes between parties.

The Multi-Unit Developments Bill 2009 addresses recommendations of the Law Reform Commission in its Report 'Multi-Unit Developments'. It seeks to address the problems arising in this area by establishing a new statutory framework for multi-unit developments, including provisions dealing with the transfer of common areas to the property management company; the management of such areas by the company and the effective internal governance of the company itself. The Bill also introduces a court-based dispute resolution mechanism for both new and existing multi-unit developments.

Provisions in the Bill

Section 1 is a standard provision containing definitions of terms used in the Bill. "Multi-unit development" means a building, or part of a building, which is divided into units of which not less than 5 are designed and intended for residential use. "Unit" means a unit designed for use and occupation as an apartment, flat or other dwelling. *Subsection (2)* provides that a unit shall not be considered as intended for residential use unless it has self-contained cooking and bathroom facilities for the exclusive use of the occupants. "Unit

owner” means the person (other than the developer or owners’ management company) who holds the highest freehold or leasehold estate or interest in a unit.

“Owners’ management company” means a company established under the Companies Acts for the purpose of becoming the owner of the common areas of a multi-unit development and for managing, maintaining and repairing such areas. For the purposes of imposing certain requirements of the Bill on existing owners’ management bodies which are not companies, *subsection (4)* provides that reference to an “owners’ management company” shall include reference to an industrial and provident society, a partnership or unincorporated body or a group of persons which own the common areas of a multi-unit development.

Section 2 imposes new conditions on the sale of units in new multi-unit developments. *Subsection (1)* provides that a unit in a new multi-unit development shall not be sold unless an owners’ management company has been established at the expense of the developer and ownership of relevant parts of the common areas have, subject to *subsection (6)*, been transferred to that company. *Subsection (3)* makes it clear that transfer of the common areas will oblige the developer to transfer the rights and amenities necessary for the reasonable use and peaceful occupation of the units. *Subsection (4)* places an obligation on the developer to do all things within his or her power which are reasonably necessary to ensure the unit owner enjoys the rights referred to in *subsection (3)*. With a view to ensuring that the developer is not relieved of responsibility for completion of the common areas as a result of the transfer of their ownership to the owners’ management company, *subsection (6)* provides that the transfer of the common areas (and any reversion relating to the units) is subject to retention of the beneficial interest by the developer. Extinguishment of the retained beneficial interest upon completion is provided for in *section 9* (see below).

Section 3 deals with existing multi-unit developments which have not been completed. It provides that in cases where units in a multi-unit development have been sold prior to the coming into operation of this section, the developer must transfer ownership of the relevant parts of the common areas to the owners’ management company within 6 months. *Subsection (2)* provides for retention of the beneficial interest pending completion of the relevant common areas.

Section 4 deals with completed multi-unit developments. It obliges a developer to transfer ownership of the common areas of such completed developments to the relevant owners’ management company within 6 months of the coming into operation of the section.

Section 5 makes it clear that the transfer of ownership of common areas does not relieve a developer of his or her responsibility for completing the development in accordance with the Planning and Development Acts and the Building Control Acts.

Section 6 provides that whenever ownership of a unit in a multi-unit development is sold or assigned, membership of the relevant owners’ management company shall transfer to the purchaser without the need to execute a transfer or have it approved by the directors of the company. The owners’ management company will be obliged to furnish the purchaser with a share or membership certificate as soon as practicable following notification of the change of ownership. It must also ensure that the register of members is updated and comply with other relevant requirements under the Companies Acts.

Section 7 outlines the consequences of transfer of common areas in a multi-unit development. It provides that the developer shall retain rights to pass and re-pass over such areas in order to complete them. There must be a valid insurance policy in place in respect of all risks relating to the developer's use or occupation of the multi-unit development and the developer must also indemnify the owners' management company against claims made against it in respect of acts or omissions by the developer in the course of completion works. There will be a general obligation on the developer to minimise inconvenience to the unit owners and ensure that access is available to them at all reasonable times. In return, the owners' management company must not obstruct the developer in exercising any rights in relation to the multi-unit development or adjoining land.

Section 8 is intended to deal with cases in which ownership or responsibility for the maintenance and management of a part of a multi-unit development which is commonly held by the owners' management company is held instead by an individual unit owner. In such cases, the unit owner and the company may agree to the transfer of ownership of that interest and responsibility to the company. *Subsection (2)* provides that any such agreement will be subject to approval at a general meeting of members of the company. *Subsection (3)* provides that where either party considers that consent to the transfer is being unreasonably withheld, they may make an application to the court under the dispute resolution mechanism in *section 18* (see below).

Section 9 provides that where a multi-unit development has been completed, the owner of any beneficial interest in the common areas (or reversion) must, as soon as practicable after completion, make a declaration for the benefit of the owners' management company stating that such interest stands extinguished. *Subsection (2)* provides that the declaration must be made with the consent of any mortgagee or owner of a charge on the property and that the consent may not be unreasonably withheld. *Subsection (3)* contains conditions in relation to such consent.

Section 10 provides for the possible extinguishment of beneficial interests where a multi-unit development has not been completed. *Subsection (1)* provides that where 60 per cent of the unit owners request the beneficial owner to make a statement that the beneficial interest stands extinguished, such owner shall make that declaration unless good and sufficient cause is shown (*subsection (4)* provides that good and sufficient cause can include a reason that the granting of the declaration would interfere with the completion of the entire development). *Subsection (2)* provides that any declaration shall be made with the consent of any mortgagee or owner of a charge on the land and that consent may not be unreasonably withheld. *Subsection (3)* contains conditions in relation to such consent. Any dispute as to whether good and sufficient cause has been shown as to why a declaration should not be made under *subsection (1)*, may be the subject of an application to court under the dispute resolution mechanism in *section 18*.

Section 11 makes it clear that an owners' management company shall have a right to carry out repairs or maintenance on a part of a multi-unit development which is not within its control where the repairs are reasonably necessary to ensure the safe and effective occupation or the peaceful enjoyment of occupation of any unit. *Subsection (2)* provides that the owners' management company may recover the costs of carrying out such repairs or maintenance from any person (including the developer) who had responsibility for carrying out the repairs or maintenance.

Section 12 makes provision for voting rights in owners' management companies established after the commencement of the Act. *Subsection (1)* specifies that one vote shall attach to each unit owner in a development, while *subsection (2)* provides that each vote shall be of equal value. *Subsection (3)* provides that the words "owners' management company" — which may be abbreviated to "OMC" — must be included in the name of any such owners' management company.

Section 13 imposes specific obligations on owners' management companies. *Subsection (2)* outlines various matters to be addressed in the annual report. They include details of income and expenditure, and assets and liabilities; the annual service charges and sinking fund account; planned expenditure on maintenance and repair; insurance cover and contracts entered into by the company. Advance notice of the meeting must be given to each member 21 days before the meeting and a copy of the annual report must be provided at least 10 days beforehand. The annual general meeting must take place within reasonable proximity to the multi-unit development unless otherwise agreed by 75 per cent of the members of the company. *Subsection (6)* makes it clear that the obligations outlined in this section are in addition to any other obligation or duty of the company under any Act, statutory instrument or rule of law.

Section 14 provides that the owners' management company must establish a scheme for annual service charges to fund expenditure on the maintenance, insurance and repair of common areas within its control and for the provision of common services (security, legal, accounting etc.) to unit owners. *Subsection (2)* provides that any such charge shall be approved by a general meeting of the members of the company, while *subsection (3)* outlines the categories of expenditure which must be itemised in the scheme of charges. *Subsection (4)* provides that in any case in which over 75 per cent of the members do not approve the proposed charge, the existing charge shall remain in place until adoption of a new charge. *Subsection (5)* provides that where no service charge applied in the previous period, the directors may determine a scheme to operate for a period of 4 months.

Subsection (6) provides that the service charge shall not be used to defray expense on matters which are the responsibility of a developer or builder unless over 90 per cent of the members vote in favour of such use. *Subsection (8)* provides that where expenditure is incurred under *subsection (6)*, the owners' management company may recover it from any person (including the developer). *Subsection (7)* provides that any approval of such expenditure is conditional on 65 per cent of the units being sold and can only come into effect 3 years after the transfer of ownership of the common areas to the owners' management company. *Subsection (9)* places an obligation on a unit owner to pay the annual service charge. *Subsection (11)* provides that the annual service charge must be calculated on a transparent and fair basis. *Subsection (12)* sets out conditions in relation to the setting of the charge, while *subsection (14)* will permit any excess to be diverted to the sinking fund. *Subsection (13)* requires an owners' management company to maintain proper records of expenditure for auditing purposes. *Subsection (15)* provides that the Minister for Justice, Equality and Law Reform may make regulations regarding the class or classes of expenditure which may be the subject of service charges.

Section 15 provides that an owners' management company must establish a sinking fund for the purpose of spending on refurbishment, improvement or maintenance of a non-recurring nature of the multi-unit development and that unit owners will be obliged to

make contributions to it (directors of the company will have to certify that expenditure is of a non-recurring nature and it must be approved by the members). *Subsection (4)* provides that contributions to the sinking fund will be made on the same basis as the annual service charge. *Subsection (5)* provides that the amount of service charge shall be €200 per annum or such greater amount as may be agreed by the members. *Subsection (6)* provides that the sinking fund must be established within 3 years of the transfer of ownership of a unit in the development or, where a development is already in existence on the coming into operation of the section, within 18 months of that date. *Subsection (7)* provides that contributions to the sinking fund shall be held in a separate identified account. Any disputes in relation to the sinking fund may be the subject of an application to court under the dispute resolution mechanism in *section 18*. *Subsection (10)* provides that the Minister for Justice, Equality and Law Reform may make regulations regarding the class or classes of expenditure which may be the subject of service charges, the procedures to be followed in the setting of the contribution and the levying and payment of the contribution.

Section 16 provides that the owners' management company may issue an aggregate request for payment under *sections 14* and *15*. Such a request must outline the basis for the calculation of each charge.

Section 17 provides that an owners' management company may make House Rules for the effective operation and maintenance of the multi-unit development. These Rules must be agreed by a meeting of members of the owners' management company. Notice of such meeting must be given to members at least 21 days before the meeting together with a copy of the draft rules.

When House Rules are made, a copy shall be given to unit owners by the owners' management company. Where a unit is let, it shall be a term of the letting that it is subject to the observance of the Rules by the tenants. The Rules may make provision for the recovery by the owners' management company from any person of the reasonable cost of remedying a breach of the rules. The Minister may make regulations concerning the making of rules and the matters to which they may relate.

Section 18 establishes a court jurisdiction for the resolution of disputes in multi-unit developments. *Subsection (1)* provides that a person (as defined in *section 19*), may apply for an order to enforce any rights conferred or obligation imposed under the Act. An application under the section shall state the circumstance giving rise to it and details of the order or orders requested. *Subsection (3)* provides that, if satisfied that a right has been infringed or an obligation has not been discharged, the court may make such order or orders as it deems appropriate. *Subsection (4)* outlines the types of order that may be made by the court. *Subsection (5)* provides that the court must be satisfied that all parties likely to be affected by the making of an order have received sufficient notice of the application. *Subsection (6)* allows the court to make such ancillary orders as it considers necessary to give effect to any order or orders made by it under *subsection (3)*.

Section 19 defines the persons who may apply for a court order under *section 18*. They include the owners' management company; a unit owner; any trustee under a will, settlement or other disposition of land by such owner; the developer; or such other person as the court sees fit.

Section 20 provides that the Circuit Court, concurrently with the High Court, will have jurisdiction to hear and determine an application under *section 18*.

Section 21 provides that at the request of any party to an application under *section 18*, the court may, at any stage during the course of the proceedings, direct all parties concerned in the application to meet in a mediation conference. *Subsection (2)* provides that where a mediation conference is directed by the court, all parties must comply with the direction.

Section 22 provides that the chairperson of a mediation conference must submit a report to the court on the outcome of the conference. A copy of the report must also be given to the parties to the application. Where the court is satisfied that a party to the application did not comply with a direction to engage in the mediation process it may make an order as to costs.

Section 23 is a saver provision which provides that nothing in the Act shall derogate from any power vested in any person or court, by statute or otherwise and the powers conferred in the Act shall be in addition to and not in substitution for any such powers.

Section 24 deals with the problems which arise when an owners' management company is struck off the register for non-compliance with reporting requirements. It provides for an extended period during which such a company may be restored to the Companies Register. At present, a company that has been struck off the Register has a period of one year within which to provide the Registrar with the relevant information and accounts. Thereafter application for restoration must be made in the High Court.

The section provides that the period of one year is extended to 6 years in the case of owners' management companies. When restored to the Register, it shall be deemed to have continued in existence as if it had never been struck off. Each application for restoration must be accompanied by a certificate from a solicitor or accountant to the effect that the company is operating as an owners' management company.

Section 25 provides that the benefit of any guarantees or warranties relating to any materials used in the construction, repair or improvement of a multi-unit development shall stand transferred to the owners' management company on the transfer of the land.

Section 26 places restrictions on owners' management companies entering into long term contracts with providers of goods and services. Such companies will not be permitted to enter into contracts for a period in excess of 3 years. In addition, any contract entered into by the company cannot include a clause imposing a penalty on the company if the contract is terminated after a 3 year period.

Section 27 specifies that the regulation-making powers conferred on the Minister for Justice, Equality and Law Reform shall be exercised in consultation with the Minister for Enterprise, Trade and Employment and the Minister for the Environment, Heritage and Local Government. *Section 28* is a standard provision relating to the short title and commencement of the Act.

The *Schedule* to the Bill specifies the provisions of the Bill which apply to multi-unit developments comprising 2 or more units but less than 5 units to which reference is made in *section 1(3)*. The relevant sections are:

Section 13 (Annual meetings and reports of owners' management companies);

Section 14 (Annual service charges);

Section 15 (Sinking fund);

Section 17 (House rules);

Section 18 (Dispute resolution and rehabilitation of multi-unit developments);

Section 19 (Persons who may apply under *section 18*);

Section 20 (Jurisdiction and venue of Circuit Court);

Section 21 (Mediation conference);

Section 22 (Report of chairperson of mediation conference).

Financial Implications

The establishment of the court-based jurisdiction in section 20 may entail some additional workload but it is intended that the mediation option will be used as far as possible. On the other hand, the extension of the current one-year time limit to 6 years in section 24 may reduce the incidence of application to the High Court for restoration to the Companies Register. Overall, it is expected that the Bill will not involve significant additional Exchequer spending.

*Department of Justice, Equality and Law Reform,
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