

The Multi-Unit Developments Act 2011

- The primary purpose of the Act is to ensure the timely transfer of common areas of multi-unit developments to the Owners Management Company (OMC) which is made up of unit owners in the development. The Act also contains detailed provisions concerning the management and operation of OMCs, including rules relating to the holding of annual general meetings, the calculation of service charges, the establishment of sinking funds and the making of house rules.
- It applies to multi-unit developments containing residential units only and to mixed use developments containing residential units and housing estates which have OMCs.
- The Act requires the common areas be transferred to the OMCs prior to sale of the first residential unit. In existing developments in which a residential unit has already been sold but the common areas have not been transferred by the developer to the OMC, transfer must be made within six months i.e. before the 30th of September 2011. Prior to the transfer of the common areas to the company a Fire Safety Certificate must be provided by the developer. The developer must enter into a contract with the OMC which sets out the rights and obligations of the parties, including the completion by the developer of the development.
- Where no sinking fund has been established such a fund must be put in place within 18 months i.e. by the 30th of September 2012 at the latest.
- Regarding voting rights in OMCs the general rule for residential developments is that one vote attaches to each residential unit. In mixed use developments other voting arrangements may apply as long as they are fair and equitable. OMCs established after the commencement of the legislation shall operate on the basis of one vote per each unit owner and each vote will have equal value. No other person will have voting rights.
- The Act establishes a Circuit Court jurisdiction to deal with disputes between parties. If mediation or another form of dispute resolution has not already been attempted the Court may require the parties to engage in a mediation process. Costs may be awarded against a party who does not engage in a meaningful way in such mediation.
- The OMC must have independent legal representation and not be represented by the same solicitor or firm of solicitors of the developer. The cost of that legal representation must be borne by the developer or if the developer is in liquidation, receivership or examination, then the liquidator, receiver or examiner will assume responsibility.
- There will be additional governance obligations and responsibilities imposed on directors of OMCs regarding the holding of an annual general meeting, and furnishing each member with an annual report. The annual report must include a statement of income and expenditure, a statement of assets and liabilities, where applicable a statement of the sinking fund together with details of the amount of annual

contribution to the fund and the basis on which it is calculated, the statement of the annual service charge for the period of the report and the current period and the basis on which it is calculated, a statement of any projected expenditure on refurbishment, improvements or maintenance of a non recurring nature, a statement of the insured value of the multi unit development, the amount of the insurance premium together with the name of the insurance company and summary of the principal risks covered, a statement setting the fire safety equipment installed in the development and the maintenance arrangement, and a statement of any contracts entered into between the OMC, a director or shadow director, a person connected with the director or shadow director.

- The proposed annual service charge must be considered at the AGM together with an estimate of expenditure which should be broken down into the following categories. Insurance, general maintenance, repairs, waste management, cleaning, gardening and landscaping, concergent security service, legal and account services, and other anticipated expenditure relating to the common areas. If the proposed service charge is disapproved by not less than 75% of those members present and voting it will not take effect and the charge for the previous period shall continue to apply.
- There are new obligations to establish a sinking fund for the purpose of discharging expenditure of a non recurring nature. Each owner will have to contribute €200.00 per annum to the sinking fund or such greater amount as may be agreed by the members. Funds collected under the sinking fund must be maintained in a separate bank account.
- The OMC may opt to make house rules with the objective of enhancing the quiet and peaceful occupation of the units. There are also mechanisms for dealing with disputes which include the ability of the OMCs, its members or other interested parties to apply to the Circuit Court for an Order to enforce any rights conferred or obligations imposed under the legislation. The Court may at any stage of the proceedings direct the parties into a mediation conference whereby the parties meet with a mediator to try and resolve the dispute. The mediator will be required to submit a report to the Court on the outcome of the conference specifying whether or not a settlement was reached and if it was the terms of the settlement or where the mediation conference did not take place specifying the reasons why.
- Where an OMC is struck off the company register for non compliance the one year period for restoration provided under the Companies Act is extended in the case of OMCs to six years.
- Directors: the Act restricts the length of service of a director to a term not greater of three years and abolishes any life appointments for directors. Existing OMC directors will have to relinquish the position within three years of the commencement of the legislation. This will place a greater responsibility on more apartment owners to go forward and take up the role of director of the OMC. Alternatively members of OMCs may need to consider the appointment of non members as directors.

- The common areas of many problem developments are likely to be vested in NAMA.
- The law means developers currently controlling the common areas (including car parks, gardens and bin areas) will be given six months from April to sign them over to private companies run by the owners. The developers will have to pay for the setting up of management companies and owners will have more say in how annual service charges are set. For example owners will be entitled to a list of all of the charges and will vote on whether they are fair and acceptable.
- The developer will also have to pay the cost of service charges for units that have not been sold.
- The law also provides that the service charge cannot be used to pay expenses that are the responsibility of the developer unless 75% of the owners agree at a meeting.
- With new developments the sinking fund must be set up within three years of the sale of the first unit. In the case of existing developments the sinking fund must be set up within 18 months of the regulations coming into affect.