



# MUD Act Explained

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# Introduction

- Basic Definitions
- Overview of the Act and who it applies to
- The legal side of the Act
- Transfer of common areas to Management Company
- AGM and Reporting
- Service charges and Sinking fund

# Basic Definitions

- **Commercial unit** : a unit within a mixed use multi-unit development which is not a residential unit and is intended for commercial use.
  
- **Common areas** : all those parts of a multi-unit development designated or which it is intended to designate as common areas and including where relevant all structural parts of a building. e.g.
  - External walls, foundations, roofs and internal load bearing walls
  - Entrance halls, landings, lifts, lifts shafts, staircases and passages
  - Access roads, footpaths, kerbs, paving, planted and landscaped areas and boundary walls
  - Architectural and water features
  - Other such areas which are from time to time provided for common use and enjoyment by the owners of the units and their servants, agents, tenants and licensees
  - All ducts and conduits, other than such ducts and conduits within and serving only one unit in the development
  - Cisterns, tanks, sewers, drains, pipes, wires, central heating boilers, other than such items within and serving only one unit in the development

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- **Developer** : the person who carries out or arranges for the development or construction of a development.
- **Development stage** : 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 on common areas for the development have been completed in accordance with Planning and Development Acts 2000 to 2009 and the Building Control Acts 1990 and 2007.
- **Member** : member of an owners' management company.
- **Mixed use multi-unit development** : a multi-unit development of which a commercial unit forms part of the development.
- **Multi-unit development** : a development being land on which there stands erect a building or buildings comprising a unit or units that is intended that amenities, facilities and services are to be shared and that the development contains not less than 5 residential units.

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**Owners management company** : a company established for the purpose 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 company registered under the Companies Acts.

**Relevant parts** : in relation to a unit, those parts of the common areas of a multi-unit development necessary for the enjoyment of quiet and peaceful occupation of such unit.

**Residential Unit** : a unit within a multi-unit development which is designed for:

- use and occupation as a house, apartment, flat or other dwelling
- has self contained facilities, i.e. that the unit has bathroom and cooking facilities within it for the exclusive use of the occupants of the unit concerned.

# Application

- This section of the Act sets out that the Act applies in full to developments with 5 or more units.
  
- In the case of a mixed unit development the provision of the Act applies equally to commercial units.
  - Section 18 to 23 are complied with where a fair and equitable apportionment of costs is attributed to each unit type.
  - Voting rights are apportioned in a manner that is fair and equitable
  
- Schedule 1 and 2 of the Act sets out sections that apply to small and unusual developments.

# Conditions in Relation to the Sale of New Development Units Coming into Act as of 1<sup>st</sup> April 2011



A unit in a multi-unit development may not be sold unless the following conditions are met:

- The management company has been established at the developers expense.
- Ownership of relevant common areas have been transferred to management company.
- Certification needs to be supplied by a qualified person regarding the developments compliance with fire and safety regulations.
- A contract must be put in place dealing with the responsibility of the developer to the management company and vice versa including compliance with statutory requirements and completion of common areas.
- Section 3 requires the developer to transfer sufficient common areas as and when required to allow unit holder reasonable and peaceful occupation of common areas.
- The developer is obliged to make sure that the OMC must have necessary powers to complete its functions. (not withstanding previous points)
- The developer will retain beneficial interest in common areas until completion.

# Conditions in Relation to Existing Developments at 1<sup>st</sup> April 2011

- This section contains similar rules as those set out under section 3 (new developments) but instead relates to existing developments.
- Key element for consideration; Where common areas have not been handed over by developer to the management company, they must be handed over no later than 6 months after 1<sup>st</sup> April 2011. i.e. 30<sup>th</sup> September 2011.
- As with new developments the developer will hold beneficial interest pending completion.
- Developments which are substantially completed, (i.e. sales not less than 80% of residential units have been closed), the transfer is not subject to reservation of the beneficial interest.
- Where developers requests, the management company concerned shall join in the deeds of transfer e.g. Joining Contract for Sale. This means there may be a third party to the contract for sale.
- Section 7 of the Act states that the transfer of common areas to the management company does not relieve the developer of his duty to complete common areas.

# Consequences of Transfer of Common Areas

- Where common areas have passed to the management company, the developer retains the right to pass and access as necessary to complete the development.
- The developer will indemnify the management company in these instances and will keep in force a policy providing adequate insurance in respect of the developers use of the common areas/development.
- The developer should minimise any inconvenience caused to unit holders.
- Developer should ensure that access to common areas is maintained in a clean and safe fashion.
- The management company and owners shall not obstruct the developer in the completion of his duties on the development or adjacent lands.

# Miscellaneous and Beneficial Interest

- **Section 10:** Rare occasions, where an individual possess ownership of the common areas that would normal rest in a management company, transfer by agreement may be made to the management company.
  
- **Section 11:** States that conferring beneficial interest to the management company must happen as soon as practical after completion of development and must be made with the consent of the mortgagee or owner of charge.
  
- **Section 12:** Merging of beneficial interest may happen before completion of the development. The circumstances in which this may happen are;
  - 60% of owners request beneficial interest be transferred.
  - Good and sufficient cause must be shown.
  - Consent must be given by mortgagee.

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- **Section 13: Right of the management company to effect repairs**
  - The Act confers the right to carry out repairs on parts of the development which are not yet transferred to the OMC to ensure peaceful and safe occupation.
  - Except for in the case of emergency, the management company will make every effort to make the person responsible for carrying out the repairs to do so, before they intervene.
  - In emergency situations the management company may go ahead and carry out the works without engaging the responsible persons.
  - Where the management company does carry out such repairs, they are entitled to recover all costs incurred from persons responsible.

# Practical Issues for Management Companies

## Transfer of Residential Units

- Section 8 of the Act deals with the transfer of residential units, it states that membership of the management company shall transfer in conjunction with the transfer of property and the new member have same rights as previous member.
- The management company should at all times take necessary steps to ensure the register of members is kept up to date.
- Unit owner also has obligation in this area to furnish the management company with the following:
  - (a) Name and address
  - (b) Particulars of tenants in unit
  - (c) Particulars of any other habitual occupiers
  - (d) Such other contact particulars that management company may reasonably request
  - (e) Should promptly notify management company of any change in any of the particulars listed above

# Annual Service Charge

- Management Company must establish and maintain a scheme of service charges as soon as practical.
- Such as service charge should not be levied unless considered and voted upon by the members at a general meeting.
- The estimate shall be broken down into the following headings
  - a) Insurance
  - b) General Maintenance
  - c) Repairs
  - d) Waste Management
  - e) Cleaning
  - f) Garden and Landscaping
  - g) Caretaker and Security
  - h) Legal and Accountancy Fees
  - i) Other

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- The proposal in relation to setting the annual service charge may be amended at the general meeting with 60% approval by members present.
- In order to reject the budget members require a 75% majority of those present.
- If it is not approved, the fall back position is to be the prior year service charge, pending the adoption of a service charge in respect of the period concerned. Where there is no prior year charge the directors may operate an interim budget for four months before presenting members with a new budget and accordingly issue interim service charges.
- Service charges levied may not be used to pay the expenses of the developer unless approved in writing by 75% of the members and furthermore 65% of the development must be transferred to persons not connected to the developer.
- In the case of a new development where no units have sold before 1<sup>st</sup> April 2011 the management company may, prior to completion of the first unit, set a service charge without holding a general meeting.

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- The owner of each unit in the development including the developer will be under obligation to pay service charges levied.
- Service charges within a management company only come into effect when the first unit in the development has been sold.
- The annual service charge shall be calculated on transparent basis and shall be equitably proportioned between unit holders.
- The service charge shall be set according to projected expenditure and any excess shall be taken into account of when setting service charge of the following period.
- Likewise where service charges are inadequate, the extent of the inadequacy shall be added to the service charge of the following year.
- The management company must maintain sufficient record of expenditure incurred to enable appropriate verification and audit.

# Sinking Fund

- Management companies are now required to establish a separate sinking fund for the purpose of discharge of income and expenditure reasonably incurred on
  - Refurbishment
  - Improvement
  - Non reoccurring maintenance
- Expenditure of this nature must be certified by the directors and approved at a meeting of the members.
- Each unit holder is obliged to make payment to the sinking fund in relation to the unit concerned.
- Similar rules apply to making payment to sinking fund as service charge. i.e. (Developers will be obliged as will members to make payment)
- The Act states that the amount payable shall be €200 or other amount agreed by members.
- A sinking fund must be set up before the later of 3 years from the first closing or 18 months after the 1<sup>st</sup> April 2011. (i.e. 30<sup>th</sup> September 2012)
- Sinking fund must be held in a separate bank account.
- The request for service charge and sinking fund may be charged and collected together.
- Service charges and sinking funds levied maybe recovered by the management company concerned as a simple contract debt in a court of competent jurisdiction.

# House Rules

- This section of the Act deals with the setting of the house rules by which the unit holders and tenants will be bound.
- The house rules will be consistent with covenants and conditions contained in the title of the unit and multi-unit development concerned.
- Additional house rules may be made once they have been considered and approved by a meeting of the unit holders.
- These house rules shall be made in a manner consistent with the objective of advancing the peaceful and enjoyment of the property and further objective of the fair and equitable balancing of the rights and obligations of occupiers.
- Each owner of a unit will be given 21 days notice of such a meeting and the notice will include a draft of the proposed rules.
- Upon agreement of the house rules the management company will furnish each owner and every unit in the development a copy of these such rules.
- Where a person who by reason is obliged to comply with house rules, commits a material breach of such rules, the management company may recover the reasonable costs of remedying such breach from such person, these costs may be recovered as a simple contract debt in a court of competent jurisdiction.

# Other Technicalities

- Where a management company has been struck off the register by the CRO, a restoration period of 6 years applies as opposed to the 1 year at present before having to go to the High Court for the restoration process.
- Benefits of guarantees issued to the developer for materials not withstanding to the contrary, automatically transfer to the management company.
- Management company shall not enter into a contract of service with a supplier in excess of 3 years.

# “Schedule 3”-Items that are required to be supplied upon handing over of common areas

- It is key that all items on “schedule 3” be held by the Company’s solicitor and made readily available.

