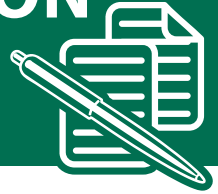


ORGANISING COMMON REPAIRS



Before you start organising common repairs it's important that you check your Title Deeds. They will tell you who owns the property, how the property should be managed and maintained, who is responsible for repairs and how decisions are made.

For more details please see the leaflet "How to Read your Title Deeds", available from West Lothian Council. (Web Link) This leaflet will help you understand what can be a complex document. If you need further advice about your Title Deeds contact a solicitor.

In some cases Title Deeds do not mention common repairs. If this is the case the Tenements (Scotland) Act will apply.

The Tenements (Scotland) Act was introduced in November 2004. It aims to make sure that communal parts of the building are kept in good repair and applies to any building that is divided into two or more flats on different floors. The Act does not override Title Deeds but is intended to fill any gaps or unworkable clauses.

It is important that the correct Procedures are used when organising common repairs in case any disputes arise. The following information sets out procedures and good practice that should be followed.

Procedures

Contacting owners

What the Tenements Act says:

Notices must be written and can be posted, faxed or emailed to the owner or their agent. If you can't contact an owner or you don't know who the owner is, then the notice can be posted through the door of the flat, addressed to "The Owner".

Notice starts from the day of posting or sending.

What's good practice?

Speak to people first so that you can answer any questions and then back up what has been said with a written note or letter.

If you have to leave a notice for an owner who is not otherwise contactable, get the delivery witnessed or send by registered post.

Register of Scotland, Erskine House,
68 Queen Street, Edinburgh, EH2 4NF
Tel: **0845 607 0161**, Fax: 0131 200 3932

Textphone Users: **0845 607 0168**

<http://www.ros.gov.uk/> or

Where a landlord is concerned check the Landlords register at:

www.landlordregistrationscotland.gov.uk

West Lothian Council delivers

westlothian.gov.uk



West Lothian
Council

Setting up meetings

What the Tenements Act says:

Give at least 48 hours notice. A meeting is not necessary if all owners (as far as practical) are consulted individually.

What's good practice?

Make sure you get written confirmation that someone has agreed to a decision. Make sure they have kept a copy of the letter.

Running meetings

What the Tenements Act says:

Where owners were not at the meeting or no meeting was held, notification of any decisions must be given quickly.

Decisions

What the Tenements Act says:

Majority decision-making is now the rule unless your title deeds say otherwise. Make sure you know whether you are taking decisions about mutual or common repairs as this could affect whose approval you need. You also need to know if maintenance or improvements work is being carried out. If you're making improvements, then the decision of 100% of owners is required.

What's good practice?

If you didn't get 100% of owners to agree, wait 28 days to allow for an appeal.

Getting estimates

What's good practice?

Get more than one comparable estimate (see information leaflet Organising Repairs to your Building).

Advance payments

What the Tenements Act says:

Where owners make advance payment of: more than £100 for one repair or £200 over 12 months, you must give a written receipt and the money must be put in a maintenance account. You should supply full details of the work and refund arrangements including:

- Estimated cost of work
- Why the estimate is considered reasonable.
- How all the owners' shares have been calculated.
- What all the owners' shares are.
- Date of decision and who made it.
- Timetable for the proposed works.
- Details of maintenance account, location and signatories.

If there are any changes, owners must be notified again. Owners are entitled to see the other quotes or estimates.

What's good practice?

Keep evidence of all expenses incurred and give owners a complete note of the accounts.

Bank accounts

What the Tenements Act says:

This maintenance account (often called the stair account) must be interest bearing and requires two signatures (or that of the property manager)

What's good practice?

Appoint a treasurer.

Returning money

What the Tenements Act says:

You may need to refund money if work does not start within 28 days of your official start date or any other date you have agreed.

Any sums left in the maintenance account after work has been paid for will be shared amongst those who have paid into the account - this includes interest.

Disagreements

What the Tenements Act says:

An owner can refuse to pay their share if they've not been properly informed of decisions made about common repairs. If this happens all other owners would need to cover their share of the costs between them. If an owner objects to the work being carried out, and intends to refuse to pay their share on the grounds that they were not properly notified, they must inform the other owners in writing immediately.

If someone owns 75% or more of the property concerned and did not vote they can reverse the decision. However, they must tell all other owners in writing.

Owners who did not vote or disagree with a decision can appeal to the Sheriff Court if they feel the decision is:

- not in best interests of the owners as a group
- is unfairly prejudicial to one owner.

WHAT IF SOMEONE DOES NOT PAY?

If someone does not pay, the other owners must make up the shortfall. In some cases owners may choose to accept this extra cost rather than taking legal action to recover the money due which can be expensive and time consuming.

If an owner is bankrupt or can't be found then the costs will also be shared equally amongst the other owners (or by floor area if relevant). The non-paying owner is still liable to repay their share of the cost to the other owners, even if those owners have since moved on.

CAN YOU MAKE SOMEONE PAY?

If you decide to pursue the debt owed then there are a number of things that you can do:

- If the debt is under £750, then you can use the small claims court. This procedure is designed to be cheap and easy to use. The Citizen's Advice Bureau and the Sheriff Court can also help.

For larger sums or a more complex problem, you should seek expert advice from a solicitor and obtain a decree from the Sheriff Court by raising an action for payment against the person owing the money. The decree is then given to Sheriff Officers who are asked to serve a document called a "charge" giving 14 days to make payment. If the debtor still refuses to pay, the Sheriff Officer can then be instructed to recover the sums due under the decree (and the legal expenses and expenses of debt recovery).

There are then various ways in which the debt can be recovered, ranging from taking the money from earnings to taking control of the property and using the rent to pay off debts. In addition, if the debt is more than £1,500, bankruptcy proceedings can be considered. Very often, people will pay up on the threat of using these procedures.

If agreement cannot be reached on how repairs should be carried out and paid for, the Council may serve a Statutory Notice. A Statutory Notice may be issued if defects can be identified in the fabric of the building.

Useful Contact Numbers

Contacts;

- 1 John Lochhead, Senior Technical Officer
Housing Strategy and Development,
West Lothian Civic Centre, Howden South Road,
Livingston, West Lothian EH54 6FF
Tel: 01506 281377 Fax: 01506 281370
mailto:John.Lochhead@westlothian.gov.uk
- 2 Environmental Health, County Buildings,
High Street, Linlithgow EH49 7EZ
Tel: 01506 775400 Fax: 01506 775368
environmentalhealth@westlothian.gov.uk
- 2 Citizens Advice Bureau West Lothian,
Suite Seven, Shiel House Craigshill,
Livingston EH54 5EH
Tel: 01506 432977 Fax: 01506 441986
E: enquiries@cabwestlothian.org.uk
Web: www.cabwestlothian.org.uk



Information is available in Braille, on tape, in large print and community languages.
Please contact the Interpretation and Translation Service on 0131 242 8181.