





## INTRODUCTION

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An ownersqassociation is simply a group of homeowners in a tenement who have decided to work together to tackle issues of shared concern, such as common repairs.

In Scotland, ownersqassociations are frequently found in new developments where they help flat owners make decisions on common repairs, maintenance issues and which property manager to employ. Research has shown that where owners associations do exist, owners are more satisfied with the way their blocks of flats are managed.

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To set up an association the owners should meet together, discuss what their needs are and agree on a constitution. A constitution is the agreed set of rules adopted by the association to make it run effectively. There is more information on developing a constitution on page 14. To make it as effective as possible you should consider electing a chair, a secretary and a treasurer. There is more information on these roles on pages 10 and 11.

The association can decide how often it meets. It does not have to meet every fortnight or every month. All you have to do is meet once a year; additional meetings can be organised as and when needed. In the early days, monthly meetings may be advisable.

### Should you appoint a property manager?

#### What is a Statutory Notice?

Housing Services can issue Statutory Notices as a means of alerting and informing owners that a problem has been identified relating to their building and that action is required by them to carry out repairs.

Further information on notices is available from the Housing Service

You may want to appoint a property manager to look after your building for you. This means someone else will organise the maintenance and repairs on your behalf. Appointing a property manager will not remove the need to set up an owners association, as you will need to agree who to employ (or dismiss) depending on the quality of service they provide. Property managers will be more likely to look after your building for you when they can see you are well organised.

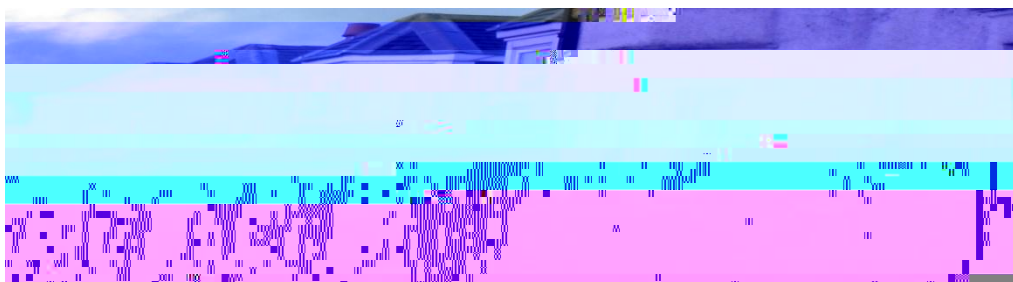
By employing a qualified property manager to regularly inspect your building you are much less likely to incur the cost of a larger repair. Failing to attend to a small repair when identified (for instance a missing slate) could lead to:

- a larger, more expensive repair in the future
- all owners being issued with a Statutory Notice to rectify a defect in the building
- problems when you come to sell your property.

Appointing a qualified property manager to look after your building will minimise the risk of one or more of these happening to your building. The Property Managers

Association Scotland Ltd can help you find a property manager in your area. They also publish their code of standards that their members must adhere to . see Useful Contacts on page 39.

With the Single Survey coming into effect as part of the Housing (Scotland) Act 2006, all owners must declare the true condition of their property.





### More than one tenement?

The easiest form of owners association is one based on a single building. This is because a single tenement is a legal entity and repair bills will normally be shared between the owners in that building (equally). In some circumstances it may be better to set up an owners association covering a number of tenements.

### One building too small?

If there are a relatively small number of flats in your tenement there may not be enough interest in setting up an association. However, if you bring together owners from a number of tenements or blocks, you may have the level of interest needed to justify setting up an association. You could for instance, join with other buildings and employ a property manager to provide a service to the whole development.

<b>Non financial decisions</b>	<b>Financial decisions</b>
Where decisions of the association have no financial implications in terms of the costs of repairs, maintenance and paying bills, owners and tenants can have equal rights in relation to voting on any proposal. The landlord can either actively participate in the decision making process or delegate responsibility to the tenant.	Where decisions of the association do have financial implications, it is only the owners in the association that have the right to vote. If tenants wish to influence decisions they should contact their landlord and ask them to get involved (as an owner).

There are important issues for landlords wishing to play an effective part in decision making in an owners association. They should establish a means of communication enabling them to consult their tenants in advance of any decisions being made by the association. It has to be remembered however, that any owner has the right at any time to require decisions to be made by the owners alone. These rights must be written into the constitution.

<b>Shared burdens</b>	<b>Common problems</b>	<b>A group of buildings</b>
Your tenement may share burdens with the neighbouring building(s). This means you may have joint responsibility for certain areas, a chimney stack or the roof for example. You can find this out by checking your title deeds. In this case it would be wise to join together since decisions will need to be taken across tenements.	There may be concerns shared by several tenements even if the burdens are not shared. In these cases it would be cost effective to join together to share the cost of erecting scaffolding and carrying out the work in one job instead of two or three.	A group of buildings may have been built at the same time in one place and share common concerns, for example, a street of 4-in-a-blocks. Joining together will give you a unified voice.

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## Planning the first meeting

Once you have talked to everyone and have a firm commitment from enough people, you can meet at a house, a local community centre, library, church hall or even a pub.

This initial meeting is intended to get agreement to set up an owners' association. However the meeting should also allow people to:

- air their views about what the problems are and what needs to be done
- discuss whether an owners' association is needed
- consider forming a steering group with the view of developing a formal constitution

Even if a meeting is informal, someone will need to act as a chair to make sure that people keep to the point and you get through the business. You should also ensure that you have an agenda (see pages 24&29) People will feel that the meeting has been worthwhile if ideas have been discussed and decisions are made. The person chairing the meeting should make sure everyone has a chance to contribute.

Someone else needs to take notes of the main decisions made at the meeting and who has agreed to do what. It is also useful to keep an attendance sheet with people's contact details.

If the meeting is well attended and you reach agreement to go ahead and set up an owners' association, the first thing to do is to draft a constitution. This can then be adopted at the next steering group meeting to form your owners' association.

However, if there are not enough people in attendance, you should hold another meeting before you move things forward. It is better to have a representative turnout before you launch the association. Aim to get a majority of owners to the meeting so you can achieve a consensus. The section on Making Meetings Effective (page 21) provides further information on planning and running meetings.

## Adopting a constitution

Once, as a group, you have chosen and amended a constitution, (pages 14&25), it can be adopted at the first official owners' association meeting.

Make sure everybody gets plenty of notice of the meeting as well as all the information they need (including an agenda and a copy of the finalised



## Roles within an owners Association

At the first official meeting you will have to make some decisions about how to organise the association to ensure it works effectively and fairly.

### The Committee

In a small tenement there may be no need for a committee . all owners will be members, but if there are more than a dozen members you may need to elect a committee to move things forward between meetings.

The Committee should be elected by the owners to make decisions on their behalf and to carry out the work of the association. The Committee organises general meetings of all the members and the Committee must carry out any actions agreed at these meetings. An AGM is important for giving members of the association information about work carried out over the previous year. It also allows the members to elect the officers of the association. Even if the same officers are re-elected each year, it is important that members have had the opportunity to nominate and vote for a new committee.

## The office bearers

The officers of a Committee are the Chair, the Secretary and the Treasurer plus any other posts that you think are appropriate.

### The Chair

The Chair is the person elected to guide the association to achieving its aims, as well as chairing meetings of the association. Your constitution should outline how the Chair is elected but normally the Chair (and all the other officers) is elected at an AGM. Sometimes Chairs are elected by the committee members alone. A good Chair needs to have;

- Patience and tact in dealing with other people
- The ability to command respect
- The ability to keep people under control during meetings
- The ability to be as impartial as possible when discussing topics, even if they have a particular interest in what is being discussed.

The Chair has to make sure that decisions at meetings are made in a proper manner. They also normally act as spokesperson or leader of



## HOW YOUR TITLE DEEDS AFFECT YOUR RIGHTS AND RESPONSIBILITIES

What the title deeds say about their rights and responsibilities for their individual flat, as well as for the common areas of the tenement.

Title deeds will always take precedence over any constitution adopted by the owners association. It is however possible to change conditions of the title deeds. See below

Title deeds may also describe;

- who owns the common parts
- how the common parts should be maintained and maintained
- how decisions should be taken;
- how costs are to be allocated between owners;
- the arrangements for paying for maintenance works and services.

In almost all cases, your title deeds will also take precedence over any legislation relating to repairs and maintenance (if they are clear and workable).

### Registers of Scotland

Your title deeds will be recorded in the Register of Sasines. They might also have been registered in the Land Register of Scotland but not all properties have yet been included in the Land Register. To find out which register your property is in, contact the Registers of Scotland Executive Agency (see Useful Contacts page 39).

The Register of Sasines records the deeds as they were originally drawn up. The Land Register contains a Land Certificate providing property details such as a description of the property, the rights that go with it, details of the current owner and details of the obligations affecting the property.

You may be charged a fee for a copy of your title deeds. If you are buying a flat, you should ask for a copy of your title deeds or Land Certificate at the time.

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### Are your title deeds clear?

Your Land Certificate, title a

## Changing title deeds

The conditions in your title deeds are obligations . known as burdens . that go along with the ownership of your flat. They are put in the title deeds to control the use of the flats in the tenement, for example, by banning letting or business use, or to ensure that the owners maintain or contribute to the maintenance of the common parts.

The conditions in your title deeds should also be in the title deeds of your neighbouring owners. While you may see a condition on shares of repair costs as unfair, your fellow owners may see it as a benefit to them. Similarly, your neighbour may see a condition banning business use as an unwanted burden, while you see it as a benefit. Therefore, if you want to remove or change a condition, you have to consider the effects on your fellow owners.

Although none of the three example constitutions summarised on page 14 requires owners to change their title deeds, title deeds can be changed by majority agreement. For instance, this could include;

requiring all owners  
agreeing to a different way of dividing responsibility for repair costs between owners.

Changing your title deeds will depend on what proportion of owners in the tenement agree to the proposed change;

All owners agree	No problem. Get your solicitor to make the changes
Majority of owners agree	Send changed deeds to Land Tribunal; If no owner objects Lands Tribunal certifies change. If an owner objects, Lands Tribunal decides.

## DEVELOPING A CONSTITUTION

### An introduction to constitutions

A constitution, (or set of rules running the association), provides your group with a set of regulations to guide how it is run and how it makes decisions. A constitution gives your group an identity, continuity, credibility and a means of establishing common objectives.

Every association needs a robust constitution. One of the main purposes of this handbook is to provide owners with a simple example constitution in order to quickly set up their own association. Thereafter owners can develop their associate is appropriate to their circumstance.

Even if your association is currently run informally a constitution would still be ostass-3(e)-yreafter

### Summary of constitutions

The key characteristics of three potential constitutions are summarised below.

#### Example 1 : Simplified Tenement Management Scheme

This is a simple constitution designed around getting works done to address maintenance and repair issues.

An example of this is reproduced on page 25 - 28

#### Example 2 : Full Tenement Management Scheme

This would provide a constitution and a scheme for the management & maintenance of the tenement which is based on the full and detailed terms of the tenement management scheme

#### Example 3 : Company limited by guarantee

This example might be appropriate where an owners association represents a significant number of owners and/or is responsible for a large repairs contract. Establishing a company is a more serious option for owners and with a registration and financial regime set by Companies House.

## Developing the appropriate constitution

The first step in developing the most appropriate constitution is to find out what your title deeds say about repairs and maintenance. Sometimes they make no reference to repairs and maintenance. But often they will describe who is responsible for maintenance and repair, how costs are divided up, whether a factor is to be appointed, how decisions are made, etc.

If the title deeds deal adequately with all these issues, then they should be followed and the appropriate text incorporated into the text of the proposed constitution for the

It is possible to change the title deeds (this is explained in more detail on page 13). If your title deeds are unclear in relation to maintenance and repair, you can either;





## Adapting your constitution

You will not find an off-the-peg constitution for an owners association that immediately meets all your needs. You and your neighbours will have to consider how much the example available best reflects and responds to the situation in your tenement and then adapt it to meet your specific requirements.

You will need to think about what roles you want the association to fulfil and whether these are reflected in the example constitution provided. Are any changes necessary to suit local circumstances?

For example, the tenement may have land (such as gardens or a back green) which may or may not be communal. The constitution or scheme for management should make clear whether this land is subject to decisions by the owners association or not.

If changes are made, they should be done carefully so that the constitution as a whole still makes sense, is workable and lawful (see below).

### Adapting Constitutions

The example constitution provided on page 25 - 28 should be changed to suit local conditions (also known as local conditions).

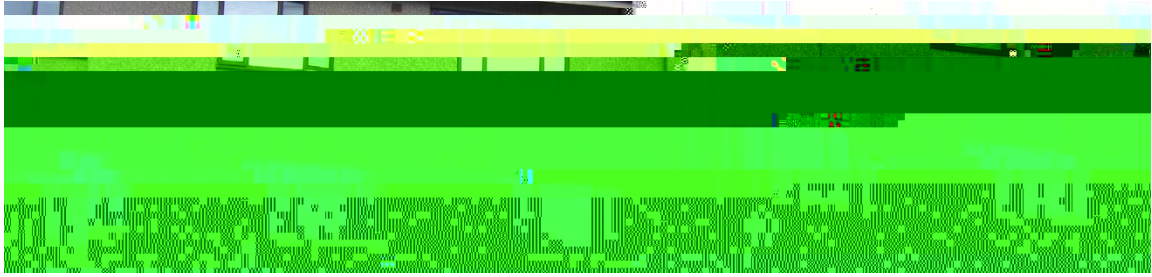
The relevant pieces of legislation regarding the example are the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 (later referred to as the 2003 & 2004 Acts).

You will need to check all title deeds to see whether they say anything about local conditions. In all cases the title conditions will take precedence.

While it is possible to develop and agree a constitution without legal advice it is recommended that independent legal advice be sought, particularly if you set up a company limited by guarantee.

Before changing your title deeds you **MUST** seek legal advice and assistance.

Owners in buildings that include non-residential property should examine the title deeds and discuss proposed consultation with the non-residential owners and possible tenants.



## **ONCE YOUR ASSOCIATION IS UP AND RUNNING**

Running an association involves some work and tasks are best shared. If too few people are doing all the work they may get tired and fed up, while others may feel excluded and unimportant. Sharing workloads and responsibilities is a way of ensuring all are involved and no one is overburdened.

Checklist all the jobs that need to be done, put a name by the person who does that job and you will quickly see if the work is shared out properly

## Keeping people involved

When an association is established, with membership and roles defined, you need to make sure the association operates efficiently. All members must be kept informed about developments whether or not they come to meetings.

The task is not just to get people involved, but to keep them involved. This is a chance, you and your colleagues will have to work at it.

## Redefine your aims

Make sure your organisation is still clear about what it is trying to do. Some associations start up in response to being issued with a works notice from the Council, others because they are concerned about the property management of the block.

While the ultimate aim may be a large roof repair, this could









## Good chairing

Good chairing is very often the key to making meetings work. The chairperson has a variety of roles;

- to introduce and summarise the purpose of the meeting
- to introduce each item on the agenda (see pages 24 & 29) giving the necessary background information
- to summarise the points made in discussions and encourage decision making
- to stop people talking for too long or straying off the subject
- to make sure everyone gets the chance to participate
- to be positive and constructive helping the association find solutions.

The main aim is to make sure the meeting achieves what it sets out to accomplish in as fair and friendly a way as possible.

## Keeping order & code of conduct

A code of conduct can be very useful because it;

- defines behaviour in a meeting
- is a way of introducing new committee members to how the committee works
- gives confidence to all committee members about how their meetings will be run
- gives the Chair guidance and support for dealing with inappropriate behaviour.

An example of a code of conduct can be found at [www.tpas.org.uk](http://www.tpas.org.uk) (go to their information sheets)

## Getting agreement at meetings

The committee is a team and agreement should be achieved through consensus. That is, by talking the issues through until everyone understands the situation and can then agree on what should be done.

All committee members need to;

- listen to one another
- check their facts
- remind themselves that their role is to act in the best interests of the building and the residents
- acknowledge that other people will have different views
- be willing to compromise.

## Voting

On most occasions in meetings it will be possible to reach a consensus without putting a decision to the vote.

The main occasion when voting might be necessary is at the Annual general meeting and when taking decisions about repairs and maintenance. The Chair should then tell the meeting on what issues votes will be taken.

When a vote is counted the number of votes for the motion, against the motion and abstentions (non-voters) should be recorded in the minutes. Once the meeting has voted then all members must abide by the decision. As a way of staying impartial the Chair sometimes does not take part in the first vote. In the event of a tie, the Chair has the casting vote.

If using the Tenement Management Scheme you should follow the voting procedures as stated in the Tenements (Scotland) Act 2004,

## **SAMPLE DOCUMENTS**

We have reproduced some sample documents to help you get your owners association underway

### **Agendas & minutes**

Preparing and distributing agendas and minutes are the responsibility of the Secretary, usually in consultation with the Chair.

#### **The agenda**

Always have a proper agenda, even if there is only one item. The order of the agenda is important. It helps to manage the discussion so that everything should get done in the time allocated for the meeting. An example agenda is provided on page 29.

Agendas should normally go out a week before a meeting, so it needs to be prepared before then, especially if it is an important meeting and other papers need to go out with the agenda.

#### **Keeping records of meetings**

Ownersq associations must keep records of their committee and general meetings. They are set up to represent the views of other people and are accountable



## Example Constitution

*Insert Address*  
Ck bYfgDAssociation  
Constitution

Th0 G.nam0 0 0 1 93.5040 g0 0 0 1 93.5040 g0 0 0 1 93T p9rrg

For any decision that can be made under this constitution, each flat (not each member) has one vote. If the flat has more than one owner they must agree between themselves how the vote is to be cast. If they cannot agree they have no vote.

Tenants may vote with the agreement of their landlord but not on decisions leading to costs being incurred.

If a decision is voted on, the wishes of the majority of the votes are binding on all members (except for changes to the constitution). In the event of a tie, the status quo shall be maintained.

### **ANNUAL GENERAL MEETING:**

The Committee shall call an Annual General Meeting of Association each year. Not less than fourteen days notice of the Annual General Meeting shall be given to all members and all those eligible for membership, together with a form of application for membership.

At the Annual General Meeting:-

The Committee shall present an Annual Report and account of their activities.

Any Sub Committee shall present an Annual Report and account of their activities.

The Committee shall present the certified accounts of the Association for the previous year.

The Officers, Committee and financial examiner for the ensuing year shall be elected.

Any proposals submitted to the Secretary in writing not less than seven days in advance of the meeting shall be discussed.

All decisions shall be taken by a simple majority of full members present and voting (but only one vote will be allowed per household).

### **SPECIAL GENERAL MEETING:**

The Secretary shall call a Special General Meeting at the request of a majority of the committee; or on receipt of a written petition by not less than \_\_\_ members of the Association, giving reasons for their request. The Secretary shall give not less than seven days notice of the holding of a Special General Meeting, which shall take place within 21 days of the receipt of the request or petition. Decisions will be taken on the same basis as at the Annual General Meeting.

The quorum for Committee and General Meetings of the Association shall be \_\_\_ Members.

**NOTICE OF MEETINGS:**

Notice of all meetings shall be posted within each close and shall include the date, time and place of the meeting and an Agenda of matters to be discussed. The Association shall be used for this purpose.

**SUB-COMMITTEE:**

The Committee may appoint such sub-committees as may be required to carry out the activities of the Association. Such sub-committees shall be directly accountable to the Committee. The Committee shall in advance agree the terms of reference of any sub-only within those terms. The Chairperson and Treasurer of the Association shall be ex officio member of any sub-committee.

Where any sub-committee is to continue in existence beyond the Annual General Meeting following its appointment, its members shall submit themselves

**ALTERATIONS TO THE CONSTITUTION:**

Any proposals to alter the constitution must be submitted to the secretary not less than twenty eight days before the meeting at which it is to be discussed. Not less than fourteen days notice shall be given of such a meeting, together with the wording of the proposed alteration(s). Any alteration shall require the approval to two thirds of those present and voting at the meeting.

If the Committee no longer exists, any \_\_\_ Members of the Association shall decide that the Association should be dissolved. They shall give at least fourteen days notice to all those eligible for membership of the meeting at which the matter shall be discussed. For the sole purpose of dissolution a Quorum need not apply and the Association may be dissolved by a two thirds majority of those present. The assets financial and otherwise, remaining when the Association has satisfied its liabilities, shall be distributed to the proprietors of each property on a proportional basis dependent on the amounts which that

Adopted Date \_\_/\_\_/\_\_

Signature \_\_\_\_\_ Chairman  
Signature \_\_\_\_\_ Treasurer





**Sample application form for joining owners association**

Dear Secretary,

Name	
Address	
Home/mobile phone number	
Work phone number	
Email address	

I am the owner occupier/ owner /tenant (please delete)

Name	
Address	
Contact number	
Email address	

If you are the tenant, please provide contact details for your landlord:

I certify that the above information is correct

Signature .....

Date.....

Please return this form to:- (name and address of Secretary)

## GUGGCWUHCb`YUZYhifdfcXi WX`VniUb`Yi ]gh]b[ `fYg]XYb]g` association in Edinburgh)

together. It is always beneficial, though, to remind ourselves of what it is that makes us a neighbourly stair.

We have all benefited from the helpfulness and consideration of our neighbours . taking in parcels, holding spare keys, baby-sitting, or simply keeping an eye out for each other. There are, of course, responsibilities which we all have, if we are to maintain this high level of friendship and co-operation.

This leaflet highlights some of these matters. Each of the items mentioned has been raised by several residents. As always, if there is anything you do not understand, or disagree with, please speak to any of the committee members (details later).

### OUTSIDE THE STAIR

Monday	Ground Floor
Tuesday	First Floor
Wednesday	Second Floor
Thursday	Top Floor
Friday morning	Ground floor
Friday Afternoon	First Floor
Saturday morning	Second Floor
Saturday afternoon	Top Floor

#### The Drying Area

Please try to stick to the timetable for the use of the drying area. It is as follows:

#### The Bin Store

The bin is emptied on Tuesdays.

Large items should not be left in the bin store. The Council will arrange to take them away if you ring them. There will be a fee.

Please ensure all your household refuse is securely enclosed. Open carrier bags, for example, spill out too easily!

Please put your rubbish IN the bin, not on the floor. If the bin is filling up, large black bags may be placed beside it, to leave room inside for smaller items.

#### Inside the Stair

Many residents have contributed suggestions as to how the stair may be kept attractive and secure.

**DO take care of your pets and children.** It is all too easy to trip over a wee one . animal or human! To save them and other residents injury, please supervise your children and pets closely when they are on the stair.



**DO take care when moving awkward or bulky items.** Furniture and bicycles can cause considerable damage to walls and doors.

**DO respect other residents**

Sample headed notepaper for owners association

## Kilmory Owners Association

**Secretary**

Peter MacOwner  
Flat 1/2 Kilmory Buildings  
55 Kilmory Street  
Any Town  
Argyll

00000 555777  
Email;SecretaryKBOA@whatever.com



<b>Maintenance Account</b>	An interest-bearing account set up to pay for maintenance and repair works.
<b>Owners Association</b>	A formal association by which owners manage and maintain their

<b>Title Conditions</b>	A broad term for conditions applying to property ownership. Conditions can include an obligation to contribute to the cost of a service or to maintain property or a prohibition from carrying out certain activities on the property.
<b>Title Deeds</b>	Legal document that states who has title or ownership of property, and sets out the conditions that affect the property.

### Who can I talk to about setting up an owners association

Our Housing Services staff can help talk you through the process and help answer any queries you may have about setting up an owners association.

Housing Services offers a range of impartial advice and practical assistance to homeowners on how to improve, repair and maintain their property.

Housing Services web page is being developed further and will soon include downloadable versions of all the information packs available to homeowners, plus other helpful advice and information on maintaining your property.

Housing Services is part of Community Services from Argyll & Bute Council

[www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

## Further reading

### Relevant legislation

#### **Title Conditions (Scotland) Act 2003**

This act forms the second stage of the property law programme, complimenting the Abolition of Feudal Tenure etc. (Scotland) Act 2000. The act modernises and clarifies the law on real burdens and title conditions.

#### **Tenements (Scotland) Act 2004**

This act was the last part of the programme of property law reform. It provides a structure for the maintenance and management of tenements if this is not provided for in

#### **Housing (Scotland) Act 2006**

This act gives local authorities a range of powers to improve the quality and condition of private housing. The act is in 10 parts and a summary can be found here:  
[www.scotland.gov.uk/Publications/2006/07/18162031/2](http://www.scotland.gov.uk/Publications/2006/07/18162031/2)

A copy of the above legislation can be purchased from The Stationery Office Scotland (TSO) and is available to download from:  
[www.opsi.gov.uk/legislation/scotland/about.htm](http://www.opsi.gov.uk/legislation/scotland/about.htm)

### Tenement repair and maintenance

#### **Common Repair, Common Sense**

Published by Consumer Focus Scotland. Download from:  
<http://www.consumerfocus.org.uk/scotland/files/2009/10/Common-Repair-Common-Sense-full-version.pdf>

#### **Management & Maintenance of Common Property**

By the Scottish Government. Download from:  
<http://www.scotland.gov.uk/Resource/Doc/76169/0019425.pdf>

### Maintenance accounts / Building reserve funds

#### **Safe as Houses** (Building Reserve Funds)

From Chartered Institute of Housing or download from:  
[www.cih.org/scotland/policy/resproject019.pdf](http://www.cih.org/scotland/policy/resproject019.pdf)

## Useful Contacts

### **Independent Housing Advice Line**

**0800 731 8337**

### **Housing Services**

Argyll & Bute Council  
Area Offices

[www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

### **Argyll & Bute Citizens Advice Bureau**

**08456 123808**

### **Chartered Institute of Housing**

The professional body for people who  
work in housing

CIH in Scotland

