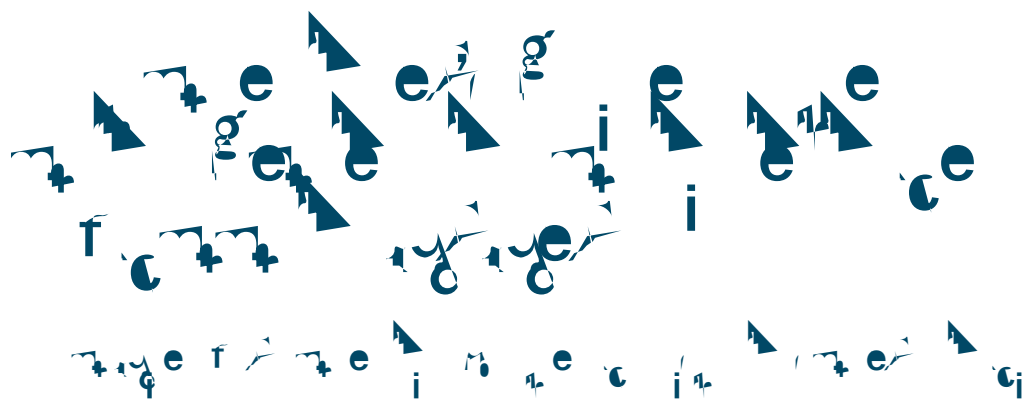




# European Institute

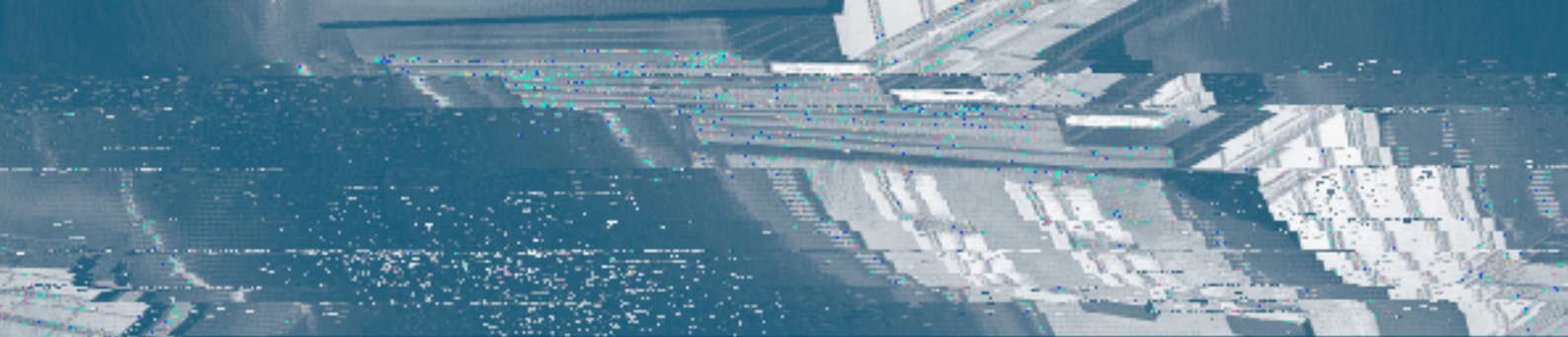






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## tenement

This guide is for owners of tenement flats in Scotland. It covers your responsibilities for maintaining and repairing the common parts of the building.

## What is a tenement?

While a tenement has traditionally been thought of as a residential sandstone or granite building of three or four stories, it has a broader legal definition.

Therefore, large houses that have been converted into flats, high-rise blocks, four-in-a-block and modern blocks of flats are tenements. So too are blocks of flats with commercial properties in them, such as ground floor shops, and office buildings, if they have two or more flats in them.

Therefore, large houses that have been converted into flats, high-rise blocks, four-in-a-block and modern blocks of flats are tenements. So too are blocks of flats with commercial properties in them, such as ground floor shops, and office buildings, if they have two or more flats in them.

This guide tells you about:

- how to find out about your responsibilities for maintaining the common parts or areas;
- your title deeds;
- how you can change conditions in your title deeds;
- the Tenement Management Scheme;
- what you can expect from a property manager or factor;
- how you can organise maintenance and repair work;
- where you can get technical and financial advice;
- how you can deal with uncooperative owners and disputes;
- where you can get information and advice.

Parts of this guide are also relevant to owners of houses on modern estates where the estate includes common property, such as common ground and the access road, if the road has not been taken over by the local authority.

If you are buying a flat or a house in a modern housing estate, you should make sure that your solicitor explains the provisions of the title deeds so that you are clear about the obligations, rights and responsibilities you will be accepting. If the tenement or the estate is professionally managed, your solicitor should ask the property manager or factor for information about common maintenance obligations and their costs.

Therefore, large houses that have been converted into flats, high-rise blocks, four-in-a-block and modern blocks of flats are tenements. So too are blocks of flats with commercial properties in them, such as ground floor shops, and office buildings, if they have two or more flats in them.



While you are solely responsible for the upkeep of your own flat or house, parts of the tenement building or estate are normally the joint responsibility of the owners whose title deeds say they have a right of common property.

If you share ownership of your flat with one or more people, then any of you can, without the agreement of the others, do whatever is necessary to fulfil your responsibilities for maintenance.

You and your co-owners are jointly and separately liable for any maintenance costs. That means that if you and your co-owner don't contribute your share of costs, your fellow owners could take action through the sheriff court against both of you or either of you.

As well as your responsibilities for maintenance, you are prohibited from:

- doing anything that would interfere with any part of the building that provides support and shelter;
- doing anything that would interfere with the natural light of any part of the building.

If you own a tenement flat, you are also responsible for those parts in which you have a 'common interest' which are the parts that provide support and shelter for the building as a whole.



No. You are responsible for insuring your own flat. However, in reality, you are not adequately insured unless you and all your neighbours are adequately insured. You and your fellow owners







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.

Your Land Certificate or title deeds and any associated deed of conditions may tell you all you need to know about your responsibilities for the common parts of the tenement. However,



The conditions in your title deeds are obligations – known as burdens – that go along with the ownership of your flat. When you bought your flat, you accepted the conditions and when you sell it, they will remain with the 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 will most likely also be in the title deeds of your fellow owners. While you may see a condition on shares of repair costs as unfair, your fellow owners may see it as a benefit. 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.


You or your lawyer can draw up the Deed of Discharge to remove or vary conditions. This can affect the burdens and impose new burdens on other properties in the tenement. While it is not essential for all owners to sign the deed, you must tell them about it and give them an opportunity to object.

You can ask the Lands Tribunal to remove or change a condition if more than 25% of the owners in the tenement wish this. That means that you do not need the consent of the majority of owners, which in practice may be difficult to achieve in large developments. If any of your fellow owners who benefit from the condition oppose your application, the tribunal will consider its merits before deciding whether to grant it. If your application is unopposed, it will be granted, depending on the condition. It will not be granted without consideration, even if it is unopposed, if it applies to:

- a facility, for example, an obligation to maintain or contribute to the maintenance of a common facility, such as the common parts of the tenement;
- a service, for example, an obligation to allow water pipes or electric cables to pass through your flat to other flats.

If the condition is more than 100 years old, you can send your fellow owners who benefit from the condition a Notice of Termination. If none of them does anything for eight weeks, you can apply to the Lands Tribunal to have it registered in the Land Register or the Register of Sasines.

If there are gaps in your title deeds, such as the S. 5(3) or S. 5(4) provisions should be taken into account or not describing all the common parts, or defects, such as allocating shares of costs that do not add up to 100%, then the Tenement Management Scheme will fawment Schmta152ud TstakQ q/D 1 >>BDC Q Q q Q



The principle of 'scheme property' is that some parts of the tenement are so vital that their maintenance should be the responsibility of all of the owners who have common property rights in those parts. Scheme property includes:

- any part of the tenement that is the common property of two or more owners, for example, the close or stair;
- any other parts of the tenement that your title deeds say must be maintained by two or more owners, for example, the gutters and downpipes.

For the avoidance of doubt, and to ensure that the main structural parts of a tenement are included in the definition, 'scheme property' also includes the following specific parts of a tenement:

- the ground on which it is built;
- its foundations;
- its external walls;
- its roof, including the rafters and any structure supporting the roof;
- the part of a gable wall that is part of the tenement building;
- any wall, beam or column that is load-bearing.

Scheme property does not include:

- any extensions that form part of only one flat;
- any door, window, skylight, vent or other opening that serves only one flat;
- any chimney stack or chimney flue that serves only one flat.

If a part of the tenement is the common property of two or more, but not all, of the owners in a tenement, then only those owners with common property rights in those parts are

Scheme decisions are binding on you and your fellow owners and your successors as owners. Any obligation arising from the scheme or as a result of a scheme decision can be enforced through the courts by any owner or anyone authorised by an owner. However, before you consider legal action, you should consider alternative ways of resolving the problem –



If the deposit for the work is more than £100 or, if taken together with other deposits made in the past 12 months, more than £200, then the money must be paid into a maintenance account. These sums may be changed by the Scottish Parliament from time to time to reflect the value of money. The account must be one that pays interest with a bank or building society and a property manager or at least other two people (who do not have to be owners) must be authorised to operate the account on behalf of the owners.

When a maintenance account is required, you and your fellow owners must be told about it in writing by whoever is nominated to hold deposits. You must also be given a note that summarises the work to be carried out and details of:

- the estimated cost and why it is considered necessary;
- how the shares of the cost have been worked out;
- the other owners' shares;
- the date the decision was made;
- the timetable for the work, including the start and finish dates;
- the number and location of the maintenance account and the names and addresses of those authorised to operate it;
- a refund date on which you can reclaim your deposit if the work is not started by the start date.

If you are not given a refund date, you can reclaim your deposit if the work has not started 28 days after the start date. Any money left in the account after the work has been paid for must be shared among the depositors in proportion to the shares they deposited.

You and your fellow owners are liable for the following costs incurred as a result of a scheme decision from the date of the decision (unless your title deeds say otherwise):

- maintenance or inspection for maintenance;
- payments to a manager or factor to carry out inspections and maintenance;
- the running costs of scheme property that benefit more than one flat;
- costs that your local authority can reclaim for work carried out by it, for example, after serving a repairs notice and then carrying out the work itself;
- management fees and costs;
- common insurance premiums;
- the costs of calculating the floor area of any flat, where this is necessary to decide how costs should be shared;
- the costs of installing a door-entry system that can be controlled from each flat;
- any other costs relating to the management of scheme property.

If any owner refuses to pay his or her share of a scheme cost, the obligation to pay can be enforced in the sheriff court by any owner or anyone authorised by an owner or owners.

In these circumstances, you should take legal advice – see section 10.





Your title deeds usually tell you how costs are to be shared between owners and, where they do, they must be followed. If your title deeds have gaps (for example, they don't say anything on costs) or defects (for example, the cost allocation does not add up to 100%), then you should follow the Tenement Management Scheme.

In the Tenement Management Scheme, costs are shared equally between you and your fellow owners, except where the part in need of maintenance or repair is:

- the responsibility (as set out in your title deeds) of only some and not all of the owners, in which case only those who have responsibility will share the cost;
- where the floor area of the largest flat is more than one and a half times that of the smallest flat. Where the floor area of the largest flat is more than one and a half times that of the smallest flat, liability for costs is determined by the floor area of each flat. The cost of measuring the floor areas is shared equally.

If your title deeds don't say anything about common insurance, then you and your fellow owners can make a scheme decision to have a common insurance policy for the reinstatement value of the tenement. You should decide among yourselves the fair contribution of each owner to the premium. However, if your title deeds say you must have common insurance, then you must

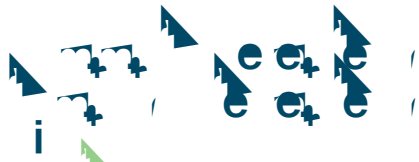
It is obviously beneficial to all to make sure that any unpaid costs are dealt with at the time of sale. A notice of potential liability for costs is valid for three years but can be renewed by re-registering it before it expires.

Liability for costs is only shared with the new owner if a notice is registered. If a notice is not registered, then you will remain liable and the buyer will not be liable. The other owners will have to pay the costs and recover them directly from you. You can avoid problems with your neighbours and buyer if you disclose any unpaid costs when you sell your flat. In this case, it is likely that your buyer's solicitor will ensure that any unpaid costs are accounted for in the settlement price.

If you and your fellow owners wish to register a notice against a flat whose owner is selling and is potentially liable for unpaid costs, you should consult a solicitor or the Registers of Scotland – see section 10, [Registers of Scotland](#) – about the procedure.

If you are owed money from a deposit you made that has not been spent after work has been paid for, you can still recover it after you sell your flat.

If your seller is liable for unpaid costs for maintenance work or other work (other than certain local authority work) carried out before the date you acquire the flat, and they or the other owners have registered a notice, then both of you will be liable. That means that after you buy, your fellow owners could pursue either of you in the sheriff court for payment. If they pursue you, then you in turn can sue the previous owner to recoup the costs. However, if a notice of potential liability for unpaid costs has been registered in the property register – see [section 10, Registers of Scotland](#) above – then your solicitor should make it a condition of your purchase that the seller pays any costs for which he or she is liable or the potential costs should be deducted from your purchase payment and you should pay them.



But may be mutual with next close.



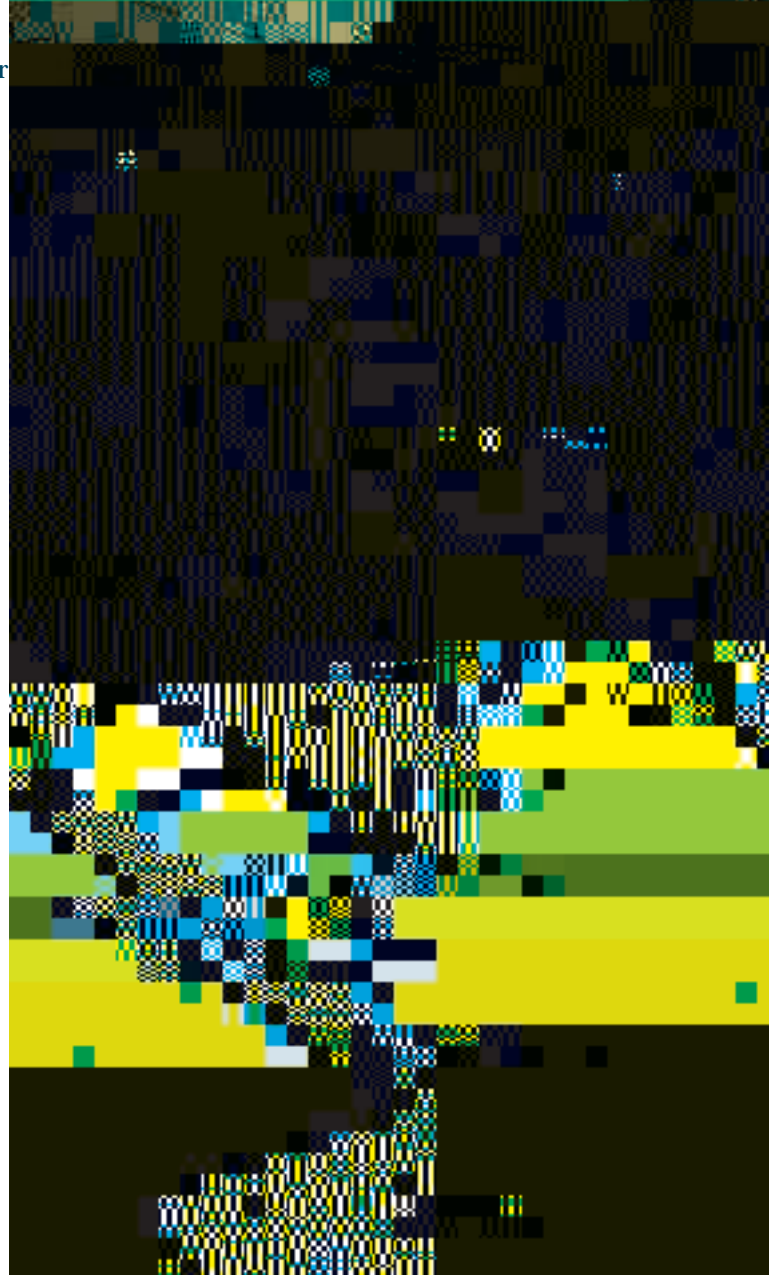
Items such as dropping a flue liner to allow a gas fire to be installed are individual but the structure of the flues should be common.

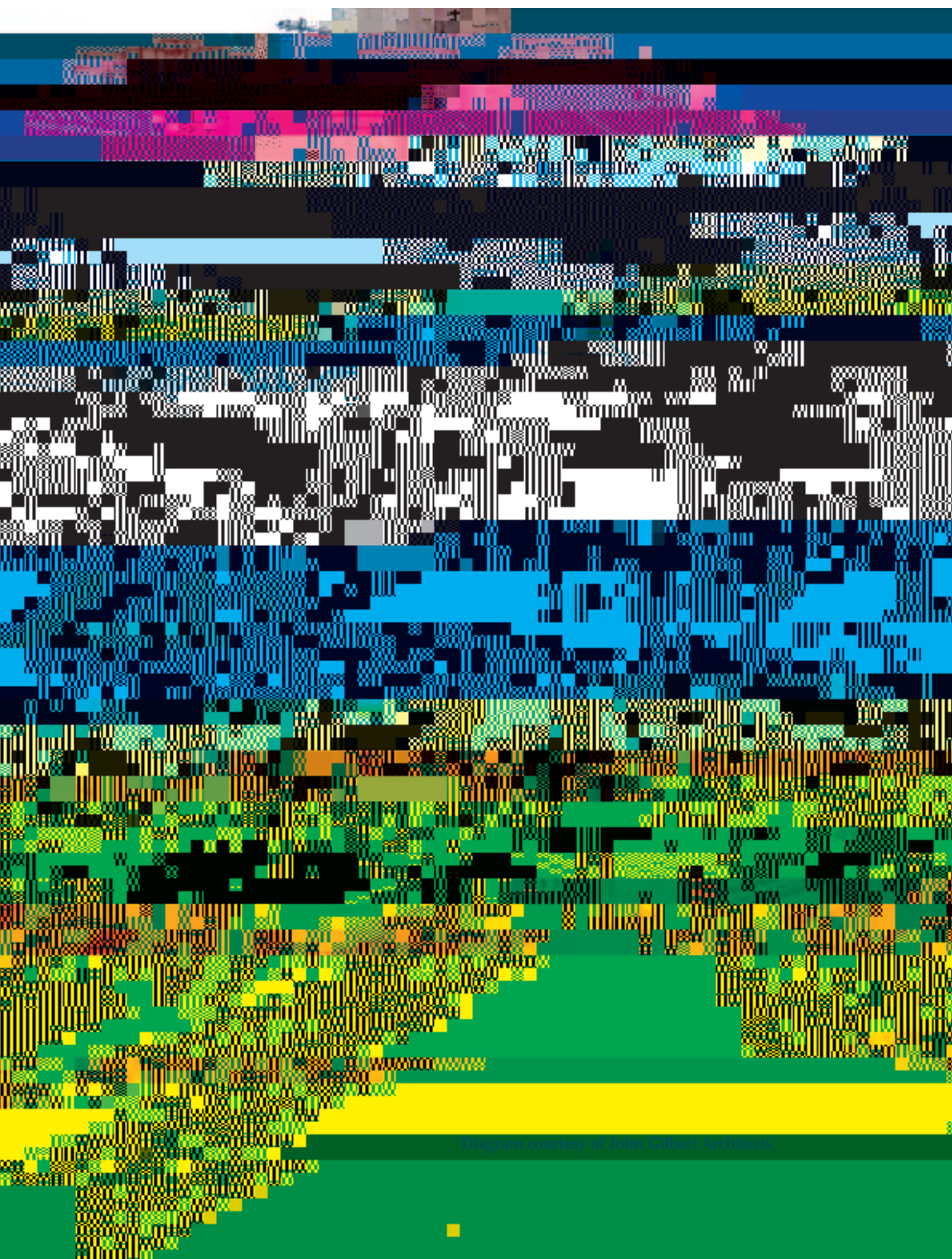



Includes flashing, ridges, roof covering and access rooflights.




These are owned in common with the next-door close. All owners in your close and all owners in the next-door close should pay for repairs to these walls.








You can either appoint a property manager or factor to provide maintenance, repair and management services or manage the building yourselves. Many tenements have existing arrangements in place, which are often longstanding.



You are not obliged to have a property manager or factor. However, if you have one, or decide to appoint one, your manager should provide some or all of the following services, depending on what you are willing to pay for.


- Your manager will arrange for an annual inspection of the property and take appropriate action to deal with any problems identified by the inspection. In doing so, the manager must organise and manage reliable and capable building maintenance contractors, which may involve coordinating the services of several building trades.
- For work outwith a routine contract, your manager will obtain estimates for the work and send them to you. If a majority of you agree to accept the estimate, the manager will normally instruct the work to start. As the contractor will expect the manager to hold funds for the work, you will be asked to pay your share of the estimated project costs before the work starts, unless the manager already holds sufficient funds from a float or sinking fund – see section 10, below.
- Your manager can provide additional services for a slightly larger fee, for example, organising and administering common insurance for the building, managing maintenance contracts for lifts, boilers and gardening services, or directly employing and supervising on-site staff, such as caretakers.

If you have any complaints about unsatisfactory work, your manager should investigate them and tell you what action has been taken to resolve them.



Private property managers or factors that are members of the Property Manager Association Scotland Limited are expected to adhere to a code of practice laid down by their representative body. If you decide to appoint, or change, a property manager or factor, the association can give you details of local members. You can also find details of the association's members and the code of practice on its website – see section 10, below.

Local authorities and registered social landlords that provide property management services for properties that have been bought under the right to buy are required to meet specific standards and have customer care policies that tell you what you can expect and how they will put things right if they fail to meet the standards.



Your title deeds may contain procedures for appointing or dismissing a property manager or factor. Regardless of what the title conditions say, a majority of two-thirds of the owners can appoint or dismiss a manager. Where your title deeds do not provide a procedure for this, a simple majority of owners can decide to appoint, or dismiss, a property manager or factor. If the decision to appoint a manager is by a majority, then the minority of owners who voted against the decision are nevertheless obliged to pay their shares of the fees.

However, if your flat is in a new development, the developer may retain the right to appoint a manager for up to five years after the property is built. In the case of sheltered and retirement housing, a developer can retain this right for three years. If the developer chooses to retain this right, the owners cannot appoint or dismiss a manager until the five years (or three years in the case of sheltered and retirement housing) is up or until the last property in the development is sold, whichever is the sooner. In the case of local authority housing bought through right to buy, the local authority has the right to appoint a manager for 30 years. This manager may be the local authority's housing department. The right remains for 30 years or until two-thirds of the properties have been sold by the local authority, when the owners can dismiss the manager appointed by the local authority.


If you have a property manager or factor, or decide to appoint one, the manager must be given clear instructions about any decisions you take about common maintenance and repairs. You may find it helpful to nominate one person to communicate directly with the manager.


You should also have an arrangement for telling the manager about any communal defect that comes to any owner's attention or about unsatisfactory repairs or services, so that they can be put right without delay.

Property managers or factors are normally willing to meet owners regularly as a group or individually. If you decide to form an owners' association, your property manager or factor can help with setting it up and assist in its day-to-day administration.

Given their professional expertise, a property manager or factor is often called on for advice on maintenance, repairs and improvements to common property. They will also deal with routine enquiries from owners, solicitors and other professionals with an interest in the property.

If you sell your flat, you should tell the property manager or factor, so that they can contact the new owner.

 Usually, you will be charged a monthly, quarterly or half-yearly management fee (although other arrangements exist) and you may be asked to pay a float when you first move in. The float is to ensure that the manager has sufficient funds in hand to pay for regular costs. You may also be asked to make regular payments to a sinking or building maintenance fund. The fund contributes to future maintenance and repair costs and helps to avoid the need for a large one



You can manage the building yourselves, unless the building is a new development and the developer has chosen to retain the right to have a property manager – see





Given the heights involved, roof inspections should only be carried out by qualified tradespeople. When roof inspections are carried out, make sure that the roof covering and any metal or lead flashings are properly checked for wear and tear or damage, and that any metal ridging or lead flashing is intact. Chimney heads in particular can cause problems as the lead flashings around them can break down and make the structure unstable.

Windows are another vulnerable area and should be included in a regular inspection cycle. If windows are not regularly painted, the putty, window bead, bottom rail and window sill will start to rot. If the sill is poorly pointed, or a replacement window a poor fit, water can get in under the window and result in rot to adjacent floor joists. Regular painting and mastic pointing are good protective measures. While maintenance of the windows in your flat is your own responsibility, a collective agreement to have them all inspected and maintained can considerably reduce your costs, and help to maintain the quality of the building and the value of your flat.

At ground level, water must be directed away from the building, so all drains must be kept clear. If you have an accessible basement, it should be checked to make sure that the drains are functioning properly. In most buildings, the ground floor flat will have a timber floor lying above the basement space, or solum (the ground under the tenement). Small vents

When gutters that are laid on the wall are renewed, be sure an undercloak flashing is placed under the gutter. That will reduce the possibility of water penetrating the wallhead and consequent rot if the gutter overflows. If the top floors are well insulated, you should make sure that the loft space is well ventilated to prevent condensation. That may require the insertion of additional ventilation tiles.

Finally, if the building is three stories or more, it is advisable to have stainless steel roof anchors fitted to the ridges. That will make it safer for any tradesperson carrying out maintenance on the roof.



This section only applies if your title deeds do not tell you about access for maintenance. Otherwise, you should act in accordance with your title deeds.

You and your fellow owners have a right of access to each other's flats, if access is necessary to:

- carry out maintenance that was decided by a scheme decision – the owner to whose flat access is needed may have voted against the decision;
- carry out repairs to the flat of the owner who needs access – the flat may be let to tenants;
- carry out an inspection so that you can decide if maintenance is needed;
- lead through a service pipe, cable or other equipment, as long as it is not wholly within another owner's flat;
- make sure that any part of the building that provides support and shelter is being maintained;
- make sure that none of the owners is doing anything that might damage the parts of the building that provide support and shelter, or doing anything to reduce the natural light to the building;
- calculate the floor area to decide how costs should be allocated.

The owner or the occupier must be given reasonable notice that access is required and, within reason, can refuse access at inconvenient or inappropriate times.

A property manager or factor, or someone such as a tradesperson authorised for the purpose by an owner or an owners' association, can also use the right of access. The authorised person must leave the flat in the condition they found it. If the authorised person causes any damage, the owner who gave the authorisation is jointly responsible with the authorised person for reinstating it or the cost of repairing it. The owner can recover his or her costs from the authorised person.







You can get advice from your mortgage lender on an additional loan or an extension of your loan to meet your own costs.

Your local authority can advise you on the availability of improvement and repair grants for your building and whether you might be eligible. You are normally expected to meet your own costs for maintenance and repairs. Grants, where they are available, are limited and means tested unless they are associated with a repairs notice served by the local authority.

If you live in a listed building in a conservation area or an area where a town scheme is in place, you may be eligible for an Historic Scotland grant – see section 10. Only A listed buildings are automatically eligible. Historic Scotland also have grants available for town schemes. There are also two area-focused initiatives, one in Edinburgh's New

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## Legal Advice

If you want an explanation of or advice on your title deeds, you could contact a solicitor who deals with residential property. A solicitor will charge a fee for this service. You could also contact your local citizens advice bureau or other advice centre to find out if they run a legal clinic, where you can get free advice.

If you want advice about a dispute, you could consult a solicitor, which you will have to pay for, or your local citizens advice bureau or other advice centre, where you can get free advice.

You can get a guide on Resolving disputes without going to court from The Stationery Office on 0870 606 55 66 or download it from:  
[www.scotland.gov.uk/resolvingdisputes](http://www.scotland.gov.uk/resolvingdisputes)

If you want technical advice and are not sure whom to ask, your property manager or factor, local citizens advice bureau or advice centre may be able to refer you to an appropriate source.

There are more than 30 Care and Repair projects in Scotland. They can provide older people with advice on property maintenance and repairs. For your local project contact:  
236 Clyde Street  
Glasgow G1 4JH  
Tel: 0141 221 9879  
[www.care-repair-scot.org.uk](http://www.care-repair-scot.org.uk)

There are citizens advice bureaux throughout Scotland. For your local CAB, look in the phone book or contact:  
Citizens Advice Scotland  
1st Floor, Spectrum House  
2 Powderhall Road  
Edinburgh EH17 4GB  
Tel: 0131 550 1000  
CABx are also listed on Citizens Advice Scotland's website at:  
[www.cas.org.uk](http://www.cas.org.uk)  
You can get on-line advice from Advice guide at:  
[www.adviceguide.org.uk/scotland.htm?region=scotland.htm](http://www.adviceguide.org.uk/scotland.htm?region=scotland.htm)

Longmore House  
Salisbury Place  
Edinburgh EH9 1SH  
Tel: 0131 668 8600  
For information on repair grants:  
[www.historic-scotland.gov.uk/index/owners-and-occupiers.htm](http://www.historic-scotland.gov.uk/index/owners-and-occupiers.htm)

For details of local housing advice agencies you can contact:

Communities Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh EH12 5HE  
Tel: 0131 313 0044  
E-mail:  
[HomePoint@communitiesscotland.gov.uk](mailto:HomePoint@communitiesscotland.gov.uk)

2 Blythswood Square  
Glasgow G2 4AD  
Tel: 0141 248 6472  
Fax: 0141 221 9720  
You can find details of member organisations and the association's code of practice at:  
[www.pmas.org.uk](http://www.pmas.org.uk)

Registers of Scotland Executive Agency maintains Scotland's two national property registers – the Register of Sasines and the Land Register. You can get information on them from:

Erskine House  
68 Queen Street  
Edinburgh EH2 4NF  
Tel. 0845 607 0161  
Fax. 0131 200 3932  
E-mail: [customer.services@ros.gov.uk](mailto:customer.services@ros.gov.uk)

George Square  
Glasgow G2 1DY  
Tel. 0845 607 0164  
Fax. 0141 306 4424  
E-mail: [customer.services@ros.gov.uk](mailto:customer.services@ros.gov.uk)  
You can search the registers on-line at:  
[www.ros.gov.uk/](http://www.ros.gov.uk/)  
Textphone users can contact Registers of Scotland on 0845 607 0168

15 Rutland Square  
Edinburgh EH12BE  
Tel: 0131 229 7545  
Fax: 0131 228 2188  
E-mail: [info@rias.org.uk](mailto:info@rias.org.uk)  
[www.rias.org.uk/](http://www.rias.org.uk/)

9 Manor Place  
Edinburgh, EH3 7DN  
Tel: 0131 225 7078  
Fax: 0131 240 0830  
[www.rics-scotland.org.uk/](http://www.rics-scotland.org.uk/)

There are Shelter Housing Aid Centres in Ayr, Edinburgh, Dundee and Glasgow. Telephone numbers are listed in the local phone books.  
[www.shelter.org.uk](http://www.shelter.org.uk)



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See 'sinking fund'.

Title conditions found in title deeds (including Deeds of Conditions) containing obligations affecting land or buildings.

Parts of the tenement that are not within the boundaries of individual flats.

Property that is owned by more than one person, where each owner has a right to a share in the whole property, but none has an absolute right to any physical portion of it.

Computerised and plan-based register maintained by the Registers of Scotland. All house sales in Scotland are now recorded in this register.

A judicial body with power to change or discharge conditions in title deeds.

An interest-bearing account set up to pay for maintenance and repair works.

A formal association by which owners manage and maintain their common property.

A company that provides maintenance, repair and management services. Property management may also be provided by a local authority or registered social landlord.

Housing association or housing cooperative registered with Communities Scotland.

A chronological register of title deeds, which is now being replaced by the Lands Register of Scotland.

Agency that maintains the two property registers: the Register of Sasines and the Land Register of Scotland.

The full cost of rebuilding the property, not just its market value.

Any cost incurred through a scheme decision.

A decision taken by the owners of a majority of related properties, such as in a tenement.

Parts of the property that are so vital that their maintenance is the responsibility of all owners who have common property rights in those parts.

A fund to which owners contribute to help offset maintenance and repairs costs.

A building comprising two or more related flats that are owned or designed to be owned separately and which are divided from one another horizontally.

The default management scheme that applies where there are gaps or defects in title deeds.

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.

Legal document that states who has title or ownership of a property, and sets out the conditions that affect the property.

