

Property managers in Scotland – a market study

Annexe G - International comparisons

February 2009

OFT1046g

© **Crown copyright 2009**

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

CONTENTS

<i>Chapter</i>	<i>Page</i>
1 England and Wales	4
2 Ireland	11
3 Australia	14
4 France	21

1 ENGLAND AND WALES

System of ownership

- 1.1 In England and Wales there are two systems of flat ownership - leasehold and (recently introduced) commonhold. Individual flats are rarely owned on a freehold basis.

Leasehold

- 1.2 Freehold ownership gives the owner 'absolute ownership'. This means that the freeholder owns the property and the land on which it stands. Ownership is for an indefinite period of time – until the freeholder decides to sell the freehold.
- 1.3 Under the freehold system, covenants for long term property maintenance cannot be placed on any freeholder beyond the initial purchaser. Because of this, a tiered relationship for the system of flat ownership has developed in England and Wales. In its simplest form, this consists of a freeholder and a number of leaseholders, one for each flat. Alternatively, there may be one freeholder, one leaseholder and a number of sub-leases for each individual flat.
- 1.4 The leaseholder owns everything within its four walls of the flat, from the floorboards to the plaster on the ceiling and walls. The freeholder owns the external or structural walls and the land on which the flat stands. Under this relationship the leaseholder is effectively the long-term tenant of the freeholder (landlord). The freeholder is responsible for the maintenance of the common areas, and leaseholders pay service charges to the freeholder to carry out this function.¹

¹ www.lease-advice.org/livingframe.htm

- 1.5 The lease is a tenancy contract between the leaseholder and the landlord or freeholder. It sets out the rights and duties of both, for example, stating who is responsible for looking after different parts of the building.
- 1.6 Under the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002), the freeholder must provide the leaseholders with certain information relating to service charges, if requested. This includes providing summaries of service charge costs, invoices, details of insurance arrangements and so on.²
- 1.7 If leaseholders want to change the manager of their property, whether deficient or not, they can do so by using the 'Right To Manage' introduced through the Commonhold and Leasehold Reform Act 2002. This enables leaseholders to take over control of the management their apartment block without having to prove any failure on the part of the landlord to manage their apartment block properly. This right does not apply where the landlord is a local authority.
- 1.8 Subject to certain conditions, leaseholders also have the right to buy the freehold of their building (enfranchise) if they and their building qualify. Once the freehold has been purchased, the leaseholders can decide how they want to manage the building, for example, managing the building themselves or appointing a manager to do so on their behalf.

Commonhold

- 1.9 Owing to perceived problems with the leasehold system,³ a new system of flat ownership was introduced in England and Wales – commonhold – under the Commonhold and Leasehold Reform Act 2002.⁴ As this is

² www.lease-advice.org/apmaframe.htm.

³ For example, leaseholders may wish to remove a property manager because of high service charges. But, given the ability of landlords to fully pass on the cost of a property manager to leaseholders, the landlord has little or no incentives to select a low cost property manager.

⁴ www.opsi.gov.uk/Acts/acts2002/ukpga_20020015_en_1.

likely to be associated only with new developments, it may take time before this becomes a common form of ownership.

- 1.10 Under commonhold individual flats or 'units'⁵ are owned freehold for an indefinite time period, overcoming the flats losing their value as the period of their leases shortens. Other advantages include the unit not being subject to forfeiture.⁶
- 1.11 The common parts of the building (such as the roof, stairs, lifts and so on) which do not fall under the definition of a unit will be held in commonhold, with the freehold of the common parts being held by the commonhold association (CA).
- 1.12 All unit owners are members of the CA. The CA is a limited company registered at Companies House. The CA is run according to its Memorandum and Articles – which are readily available for inspection at either Companies House or the Land Registry. The CA is responsible for the maintenance of the common areas.
- 1.13 The crucial distinction between the leasehold and commonhold systems in England and Wales is that there are regulatory requirements that specify the rights and obligations of the unit holders under the CA.⁷ Specifically, these regulations are the Commonhold and Leasehold Reform Act 2002, the Commonhold Regulations 2004, and the

⁵ The definition of a 'unit' is not confined to within the 4 walls of a flat. It may include a parking space or a garage. Given this, the term 'unit' will be used rather than 'flat' when discussing commonhold.

⁶ Under leasehold tenure, the leaseholder may have the flat repossessed by the freeholder without compensation for non-payment of service charges. The lack of monetary compensation is felt by many to be disproportionate.

⁷ www.lease-advice.org/commframe.htm.

Commonhold Community Statement (CCS).⁸ Under leasehold, the rights and obligations are those specified in the individual lease.

- 1.14 The CCS is development-specific and is registered at the Land Registry. It identifies the 'units' and the common parts by reference to a plan. It sets out the charges payable by each unit for the running of the common areas, and for the reserve fund, and the duties and obligations of the CA and each unit holder.

Property managers⁹

- 1.15 Under the freehold/leasehold system, a management agent may be appointed by the landlord to maintain and manage the building on their behalf. The agent's fees are usually paid by the leaseholders as part of the service charge. In England and Wales, there are 200 members of the Association of Residential Management Agents (ARMA). Members of ARMA need to satisfy an independent body of their competence and as a condition of membership are required to abide by a government approved code of practice (produced by Royal Institute of Chartered Surveyors) in relation to property management.¹⁰
- 1.16 There is also a specific qualification for property managers issued by the Institute of Residential Property Managers. The Institute was launched by the ARMA in 2002, although it is not a specific requirement for ARMA membership.

⁸ www.jamesdriscoll.co.uk/articles.commonhold.html

www.lease-advice.org/commframe.htm

⁹ The information in this section was taken primarily from 'Appointing a Managing Agent: The need for a managing agent, their selection and working with them', produced jointly by the Association of Residential Managing Agents (ARMA), the Association of Retirement Housing Managers (ARHM) and the Leasehold Advisory Service (LEASE). Please see www.lease-advice.org

¹⁰ Please see www.arma.org.uk

- 1.17 Leaseholders have rights in terms of obtaining information about their maintenance charges from their landlord. From 1 October 2007 a demand for payment of a service charge must be accompanied by a summary of leaseholder rights and must contain certain information.¹¹
- 1.18 When a landlord proposes to enter into a long term agreement with a contractor, there are further requirements of notification and disclosure. For example, they must identify any connection between the contractor and the landlord.

Dispute resolution¹²

- 1.19 Leaseholders have access to a separate tribunal service called the Leasehold Valuation Tribunal (LVT) for resolving disputes. The LVT has the power among other things to:
- assess the reasonableness of service charges and whether leaseholders should be liable to pay
 - allow challenge of individual charges and work
 - settle disputes about the landlord's choice of insurer
 - decide applications on the dispensation of service charge consultation requirements, administration charges and the right to manage.

¹¹ The service charges (Summary of Rights and Obligations) (England) Regulations 2007/1257. Also indication that Commonhold and Leasehold Reform Act 2002 will bring in some provisions for landlords to account for how they spend leaseholders money.

¹² The information in this section was taken primarily from the 'Residential Property Tribunal Service' website. Please see www.rpts.gov.uk/our_services/ld.htm.

- 1.20 Also, if the landlord's management is deficient, then leaseholders can apply to the LVT for the appointment of a new manager (except where the landlord is a housing association or local authority).
- 1.21 The LVT was set up specifically to provide a less formal means of resolving disputes than is provided by the Courts and where parties can represent themselves. The maximum fee is set at £500. LVT decisions may be appealed to the Land Tribunal.

Help and advice

- 1.22 The Leasehold Advisory Service (LEASE), is funded by the government and provides free legal advice to leaseholders, landlords, professional advisers, managers and others on the law affecting residential leasehold and commonhold.
- 1.23 LEASE also offer a mediation services that provides a way of settling a dispute without the need to go to court or the LVT, where a leaseholder has exhausted the property manager's internal complaints system and the ARMA complaints procedure provided the problem relates to the managers compliance with the code of practice. Where agreement is reached, the mediator will help the parties draw up a formal agreement and produce the necessary papers for signature. Where agreement is not possible, either or both parties are free to take their dispute to the LVT.¹³
- 1.24 The pilot mediation service, launched in November 2005, received 83 applications for mediation, 11 of which progressed to a successful mediation hearing.¹⁴ In addition, LEASE offer access to past LVT decisions which may provide additional guidance on the likely success of any application to the LVT.

¹³ 'LEASE Mediation service', LEASE. Please see www.lease-advice.org/main.htm

¹⁴ 'LEASE annual report 2007', LEASE, paragraph 9.1. Please see www.lease-advice.org/anre07.pdf

Other solutions

- 1.25 As noted above, if leaseholders are dissatisfied with the way the landlord is managing the property, leaseholders may take over the management of the property through a Right to Manage Company.
- 1.26 Again, the option is also available to purchase the freehold, irrespective of whether the landlord wishes to sell.

2 IRELAND

- 2.1 In Ireland a new body - the National Property Services Regulatory Authority (NPSRA) - will take responsibility for the licensing and regulation of all trading entities providing auctioneering, estate agency, property letting and/or property management services when the relevant legislation comes into force. The National Consumer Agency (NCA) has recently established a Consumer Forum for multi-unit developments.

System of ownership

- 2.2 The two common ways of holding legal title to property in Ireland are by way of either a freehold or a leasehold interest. While the freehold interest gives the owner an absolute right to their property, the leaseholder holds their title for a defined period (for example 99 years) and is subject to a list of obligations (such as paying rent, keeping the property in good repair and so on).
- 2.3 Owing to their nature, individual apartments have not traditionally been owned with a freehold title, as the essential fabric of the building (for example, structural walls) are common to them and other individual apartment owners.
- 2.4 When the Land and Conveyancing Reform Bill 2008 comes into force, though, it will be possible to vest the freehold title to each unit owner, with mutual covenants dealing with arrangements for common areas. The freehold interest in the common areas would continue to be owned by the owners' management company, of which each unit owner would be a member.
- 2.5 This change in the law will mean that the choice to purchase freehold title of an apartment will be available in addition to the current option of a leasehold interest.
- 2.6 As regards the organisation of owners, while some older developments may still rely on the use of an informal resident/owner association, the legal structure for most large multi-unit developments in Ireland is an

owners' management company (OMC), of which each owner is a member. In modern developments a management company is the usual way owners take responsibility for the maintenance of common areas.

- 2.7 The OMC is the legal owner of the unit and common area leaseholds. The management company has a legal responsibility to maintain the standard of the development, and has other related responsibilities as well (for example, providing each owner with a copy of the company's audited annual accounts).
- 2.8 As a company subject to Irish company law, matters such as the appointment of its directors, the auditing of its accounts are subject to Irish company law. For example, the management company must once every year, file an Annual Return with the Irish Companies Registration Office.
- 2.9 An individual apartment owner has two legal interests in his property: as the legal owner of his dwelling unit and as part owner (shareholder) of the management company which owns the common areas.
- 2.10 The obligation of an apartment owner, as regards his property, will be set out in the terms of the lease. Under the terms of the lease, the management company agrees to provide the services required to maintain and manage the development and owners agree to pay an annual service charge to the management company to pay for those services. On the finalisation of sale of a unit, the purchaser must immediately be placed on the register of members of the company. The membership or share certificate is a legal document that confirms the holder as the owner of a unit is under the terms of their purchase agreement a member of the management.
- 2.11 Members of the management company may choose to manage the building themselves or employ a managing agent.

Property managers

- 2.12 The management company can appoint a management agent to carry out specific duties set down by the management company or a range of

services agreed between the management company and the management agent. The Irish NCA has developed guidelines for what a contract between the management company and the managing agent should cover. If the management company is not satisfied with the management agent looking after the development, they can appoint a different one through the tendering process.

- 2.13 Managing agents are firms who are contracted to administer, coordinate and provide management services such as repair, maintenance and insurance of the common areas on behalf of management companies.
- 2.14 Under the Property Services Regulatory Authority Bill 2008, the Irish Government will set up a NPSRA to take responsibility for the licensing and regulation of all trading entities providing auctioneering, estate agency, property letting and/or property management services. It has a consumer information function.
- 2.15 The Bill envisages that the NPSRA will publish standard-setting Codes of Practice for property managing agents and that a managing agent must provide a 'letter of engagement' in a form that would set out in Regulations, to any person for whom the agent provides a service. These provisions would establish a clear statutory basis for the standards expected of property managing agents, including the contract terms on which the managing agents provides professional services to an owners' management company in a multi-unit development. The NSPRA will have powers to investigate complaints against managing agents.
- 2.16 The NCA has also been engaged with stakeholders to establish best practice guidelines in the area. These might cover a contractual template between the managing agent and the owners' management company and a general approach to the issue of professional fees and service charges.

3 AUSTRALIA

- 3.1 The concept of strata title, where persons own and have title to individual lots within buildings or complexes, was originally devised in New South Wales (NSW) in the early 1960s, and has evolved since. As other Australian states have modelled strata systems on NSW, the NSW system is described here.

System of ownership

- 3.2 The Strata Schemes (Freehold Development Act) 1973 provides a system of title which gives exclusive ownership of part of a building known as 'a lot', and supporting rights over other parts of the building known as 'common property'.
- 3.3 Under Strata schemes therefore a building and the land upon which it stands is divided into two areas – private and common property. Private property consists of privately owned units (or lots) held in freehold. Common property is the part of the land and building in the strata plan which does not form part of any unit, for instance stairways, passages, driveways and car park.
- 3.4 The classification of property, as units or common, varies across schemes. Variations occur at the time the surveyor draws up the strata plans for registration at the Department of Lands. It is the surveyor who classifies property as private or common.
- 3.5 An owners' corporation comprises the registered owners of all the units in the strata plan. Ownership of common property is vested in the owners' corporation (OC) with all owners being members of the OC. The share of ownership (or unit entitlement) of the common property is based on relative property values at the time the scheme was registered. Unit entitlement determines the weight assigned to owner's votes at general meetings and the share of the charges to be paid. An OC and its committee have powers and responsibilities to administer the building and care for the land around the building, entrance, stairways, paths and so on.

Property managers

- 3.6 The Strata Schemes Management Act 1996 provides for a system of financial management and decision-making by defining the rights and responsibilities of the OC and each owner in a strata scheme. It also provides a system for settling disputes in the strata scheme, including those in the day-to-day management.
- 3.7 The property is managed using a system consisting of the following bodies:
- **Owners corporation.** This is a distinct legal entity – it is a registered unlimited liability company. All owners are required to be members of the OC. The OC has principal responsibility for the management of the scheme.¹⁵ It has a statutory duty to maintain and repair the common property. It may delegate, some or all of these powers, to a property manager which it appoints at an annual general meeting (AGM) of the owners. The statutes list certain compulsory items which must be on the AGMs agenda such as reviewing the 10 year sinking fund plan and electing the Executive Committee.¹⁶ Before a decision can be made, there is a quorate requirement that provides that at least one quarter of the people entitled to vote (or their nominated proxies) have to be present. If this does not happen, then the meeting must be postponed for at least a week. At this second meeting, a quorum is not necessary. The voting majority required to actually make a decision varies depending on the importance of the decision being

¹⁵ Strata Schemes Management Act 1996, section 8(2).

¹⁶ For a full list of compulsory agenda items see www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Strata_schemes/The_owners_corporation/Meetings.html.

made.¹⁷

- **Executive Committee (EC).** The EC consists of up to nine elected owners appointed by the OC. It is responsible for making day to day decisions on behalf of the OC, with three posts (a chair, secretary and treasurer)¹⁸ each with their own statutory responsibilities.
- **Property manager.** The appointment and giving powers to a managing agent can only be decided by a majority vote at a general meeting. A strata managing agent may carry out some or all of the functions, duties or powers of the OC. Managing agents are licensed under the Property, Stock and Business Agents Act. OC must make sure that any managing agent they engage is licensed under the Property, Stock and Business Agents Act. The property manager's responsibilities are set out in a contract between the OC and the property manager. The duration of the property manager's employment is a matter for negotiation negotiated between the OC and the property manager.
- **Caretaker.** If the OC chooses to have a caretaker then his/her role is to manage, maintain and repair common property, and control the use of common property by trades persons and suppliers.¹⁹

3.8 Owners pay charges towards two funds – administrative and sinking fund.²⁰ The administrative fund covers day-to-day repairs, buildings

¹⁷ There are two variations of the applicable voting majorities – super-majority and straight majority. The former is defined as no more than a quarter of votes, of those present, against. All other decisions require a straight majority of those present.

¹⁸ Strata Schemes Management Act 1996, section 18(2).

¹⁹ Strata Schemes Management Act 1996, section 40A.

²⁰ Both funds may be invested. Any interest income arising from this must be accrued as part of the funds. (Schemes Management Act 1996, section 73).

insurance, service charges and management fees.²¹ The sinking fund is used for capital expenditures such as painting the building, replacing the roofing, guttering or fences.²²

- 3.9 Schemes registered on or after 7 February 2005 are required by section 75A of the Strata Schemes Management Act 1996, to have a ten year sinking fund plan. This is an 'estimate' of the anticipated expenditure over the next ten years. The plan has to be reviewed every five years.
- 3.10 Schemes registered prior to 7 February 2005 are also required to have a 10 year sinking fund plan. However, this requirement is effective in phases. For example, under phase 1, strata plan number 50,000 or above will start a ten year sinking fund plan from 1 July 2006. By the fourth and final phase in July 2009, all schemes will have a 10 year sinking fund plan.
- 3.11 The OC informs each owner of the charges payable towards each fund.²³ In order to encourage prompt payment of these charges, the OC has the right to introduce a ten per cent discount.²⁴ If owners are late paying their charges then a simple formula for calculating interest, laid out in the statutes, is followed.²⁵
- 3.12 The OC must seek two quotations for all proposed large works above a certain threshold.²⁶

²¹ Strata Schemes Management Act 1996, Part 3.

²² Strata Schemes Management Act 1996, Part 3.

²³ Strata Schemes Management Act 1996, section 76.

²⁴ Strata Schemes Management Act 1996, section 79(4).

²⁵ Strata Schemes Management Act 1996, section 79(2).

²⁶ Strata Schemes Management Act 1996, section 80B.

Dispute resolution

- 3.13 The Strata Schemes Management Act 1996 removed, for the most part, the involvement of the courts in disputes. It introduced a process of dispute resolution and mediation.²⁷ The system in NSW looks at disputes between occupants (for example, owners or tenants), and the OC. For disputes involving the property manager – the contract between the OC and the property manager will be relied upon.
- 3.14 The first step is to try and resolve disputes informally. If this fails, then a mediator may be used. Mediation is a structured negotiation process, involving an independent mediator.²⁸ Mediation services are available for the NSW' Office of Fair Trading for a nominal fee or free of charge from the Community Justice Centre.²⁹
- 3.15 Mediators cannot consider applications to: a) appoint a property manager, b) issue interim orders or stays, c) vary or revoke previous orders, d) resolve lots in the initial period e) impose civil penalties.
- 3.16 Successful settlements are binding on those involved and can be made into an enforceable order. However, mediation may not be successful owing to failure of the parties to reach a settlement or the break down of mediation. In such circumstances, an application to the Strata Schemes Adjudicator or the Consumer, Trader and Tenancy Tribunal can be made.
- 3.17 The Adjudicator makes decisions on disputes where meditation has failed or may not be used. The issues on which it can rule include disputes involving repairs to common property, water penetration

²⁷ [www.prrs.net/Papers/Antoniades Strata Living And The 10 year Sinking Fund.pdf](http://www.prrs.net/Papers/Antoniades_Strata_Living_And_The_10_year_Sinking_Fund.pdf).

²⁸ Strata Schemes Management Act 1996, section 127.

²⁹ www.tenants.org.au/publish/factsheet-13-renting-in-strata-scheme/index.php.

through windows and floors, enforcing the by-laws,³⁰ appointment of a PM, validity of a meeting and variation of insurance.

- 3.18 The Adjudicator looks at the application and all submissions, as well as decisions made in similar cases. The Adjudicator's decision, including any decision to dismiss the complaint or dispute, may be appealed, by the parties to the tribunal usually within a time limit of 21 days of the order taking effect.
- 3.19 As well as appeals of the Adjudicator's decision, the tribunal may make decisions on: a) changes to unit entitlements, b) terminations of a caretaker's agreement,³¹ and c) authorisation of certain actions in the initial period to preserve the facilities of the scheme in the early stages of the development.³²
- 3.20 As well as submissions etc being made, there is an open hearing before the Tribunal. The Tribunal usually gives a decision after everyone has finished giving their evidence. The Tribunal may impose civil penalties in the form of fines if OC notices or Adjudicator or Tribunal orders are contravened.³³
- 3.21 If parties are unhappy with any decision reached by the Tribunal then they may ultimately appeal to the Supreme Court.

Availability of advice and support

- 3.22 NSW' Office of Fair Trading provides information to all people connected with strata schemes in NSW about the Strata Management Act 1996

³⁰ The by-laws are the OCs rules for managing the scheme and are registered with the Department of Lands.

³¹ Strata Schemes Management Act 1996, section 183A-B.

³² Strata Schemes Management Act 1996, section 182.

³³ Strata Schemes Management Act 1996, section 202-203.

and the services provided by the Commissioner, the Adjudicator and the Tribunal. It has a section of its web site dedicated to strata schemes.³⁴

3.33 Another source of information is the Tenants of NSW. This is aimed at tenants living in schemes. It provides a fact sheet giving a much simpler description of the structure of schemes and the process of dispute resolution.³⁵

³⁴ [www.fairtrading.nsw.gov.au/Tenants and home owners/Strata schemes.html](http://www.fairtrading.nsw.gov.au/Tenants_and_home_owners/Strata_schemes.html).

³⁵ www.tenants.org.au/publish/factsheet-13-renting-in-strata-scheme/index.php.

4 FRANCE

System of ownership

- 4.1 The French system of flat ownership is commonhold (or *copropriété*) and is governed by the law 65-557 of 10 July 1965 (completed and modified later by other laws, such as law 2000-1208 of 13 December 2000).
- 4.2 Under commonhold, each development is divided into two areas – the private and common areas. The private area (or *parties privées*) is an individual flat, held in freehold. The common areas (or *les parties communes*), as defined by Article 3 of law 65-557, include the stairwell, lifts, roofs, exterior walls and so on.³⁶
- 4.3 Each owner of a private unit is at the same time joint owner of a part of the collective area on a pro-rate basis of thousandths shares conferred on them by their title deeds of their unit.³⁷ Shares are determined by the height of the ceilings, the fittings, the floor on which the flat is located, and whether the flat has a balcony, terrace, private garden and/or parking space. The percentage ownership of common areas determines the amount of service charge paid.
- 4.4 When the commonhold is created, article 8 of the law 65-557 provides that two documents must be created. One is the *règlement de copropriété* - which sets out the rules that the commonhold must follow. This specifies the use of the private and common areas, the administration of the common areas and the categories of maintenance fees.

³⁶ Certain common areas may be for private use (*jouissance privatif*). For example, this may occur if the garden is only accessible from the ground floor flat.

³⁷ Since 31 December 2002 the method of calculation of these percentages along with the actual percentages must be laid out in the document of commonhold.

4.5 The other is a document - the *état descriptif de division* - that defines areas as private or common. Plans of the development are often used to help make the distinction clearer.

4.6 French law makes provisions for the creation of three bodies to manage the commonhold. These are the:

- **Residents association (or *syndicat des copropriétaires*).**³⁸ All owners must be members of the residents association which is a legal entity without assets (unlike a company). It meets at least once a year in an annual general meeting to decide on matters relating to property:
 - it establishes or modifies regulations governing the property
 - it maintains the building and administrates the shared areas
 - it votes a planning budget each year to meet day-to-day expenditure for maintenance and repair of the common areas.
- **Union council of owners (or *conseil syndical*).**³⁹ This is a sub-committee of the residents' association. Membership comprises flat owners elected at the general assembly. The council will elect some of their members who will meet as an unincorporated entity, the union council of owners. The Union Council of Owners (council) is tasked with assisting the property manager and overseeing the implementation of the residents association's decisions. The council contributes to the preparation of the agenda for the annual general meeting, and can receive all

³⁸ Article 14 of the law 65-557.

³⁹ Article 21 of the law 65-557.

documents relating to the management of the building.

- **Property manager (or *le syndic*).**⁴⁰ The property manager carries out the decisions of the residents association. It may be a company, an individual who is a professional property manager, or an owner. It is appointed by the residents association at the general assembly. In the case of new developments, the developer will initially appoint the property manager. This selection must be approved by the residents association at the first general assembly.⁴¹ Property managers are restricted from holding the position for more than three years, without re-appointment by the residents association. The property manager has a number of responsibilities. These include:
 - ensure the property's regulations are respected
 - calling regular general assemblies
 - implementing the decisions of the general meeting
 - managing the building - the PM must take action to preserve the integrity of the building.⁴² This may involve managing personnel, taking out insurance and ensuring proper maintenance
 - ensuring emergency work to protect the building is done
 - manage accounts and schedules
 - operate an account for the property
 - collect charges

⁴⁰ Article 18 of the law 65-557.

⁴¹ Article 17 of the law 65-557.

⁴² www.frenchalps.angloinfo.com/countries/france/syndic.asp.

- represent the residents association in the courts.

4.7 Owners pay two charges – collective investment charges and shared operating charges. Collective investment covers the costs of maintaining the development and includes charges for maintenance work, major repair works or improvements. Shared operating charges are charged for services such as cleaning the common areas, heating, lifts, and concierge services. The amount payable by each owner, for both types of charges, is determined by the extent to which the owner benefits from the service provided,⁴³ which for some services is calculated as proportional to the value of his/her unit. For example, an owner, on the top floor, will pay more for the maintenance of lifts than one on the ground floor.⁴⁴

Dispute resolution

4.8 In France the procedures for dealing with disputes are clearly set out. Disputes may arise that involve the property manager and/or the residents association.

4.9 In disputes, the property manager may take action or may be the object of action. Actions against the property manager arise out of the owners being dissatisfied with the services provided by the property manager. This is first tackled through the property managers own internal complaints' procedure.

4.10 The first step, in the internal procedure, is to canvass other owners to gain a sense of the main complaint(s) against the property manager. These complaints are then taken to the council, along with a request for

⁴³ Article 10 of the law 65-557.

⁴⁴ Ministère de l'Équipement, des Transports, du Logement, du Tourisme et de la Mer Direction Générale de l'Urbanisme, de l'Habitat et de la Construction, *Les copropriétés*, March 2004, page 37 and page 45. Hereinafter '*DGUHC Report*'.

<http://www.coproprietes.org/anah/upload/file/coproprietes.pdf>.

some or all of the dissatisfied owners to be nominated for election to the council at the next general assembly. If the dissatisfied owners are elected to the council, then change is not instantaneous. They must wait until the next general assembly to action any change that involves an increase in the budget. In the interim, the owners and the property manager will seek to resolve their issues with each other. If this is unsuccessful, then the owners can seek to dismiss the property manager and appoint a new one at the next general assembly.⁴⁵

- 4.11 In addition to this, there are a number of instances when the property manager can be sued in High Court (*Tribunal de Grande Instance*). These arise because the PM has broken one of its duties under the law of 65-557 or the *règlement de copropriété*.
- 4.12 Actions taken by the property manager occur when individual owners to court over non-payment of charges.⁴⁶
- 4.13 In a similar way, actions may be taken against, or taken by, the residents association.
- 4.14 Individual owners may challenge the residents association's decisions on a procedural basis. That is, the laws regarding the functioning of the general assembly were not followed or the correct voting majority was not applied when approving decisions.
- 4.15 In addition to actions taken by owners, the residents association faces the threat of legal actions from its creditors. In this case, creditors, such as those that supply gas or water, may take the residents association to the high court to recover the owed amount.⁴⁷

⁴⁵ The information in this section was taken from www.frenchalps.angloinfo.com/countries/france/syndic.asp.

⁴⁶ *DGUHC Report*, page 25.

⁴⁷ *DGUHC Report*, page 9.

4.16 The property manager may take actions against individual owners to recover unpaid charges.⁴⁸

Availability of advice and support

4.17 In France there are a variety of websites that offer guidance on the French law. These include:

- **CSPC.**⁴⁹ This is an association that defends the rights of owners and co-owners.
- **UCIM.**⁵⁰ This is a union of joint ownership. It gives practical information of the law under commonhold.
- **Copropriete cooperative.**⁵¹ Whilst this website is aimed more at PMs, it does contain useful information and advice on the law surrounding property management.

⁴⁸ *DGUHC Report*, page 35

⁴⁹ <http://www.cspc.asso.fr/>

⁵⁰ <http://www.ucim-inter-coproprietes.org/>

⁵¹ <http://www.copropriete-cooperative.com/>