



## Common Repairs, Title Deed burdens and owner liability

### The Scheme of Assistance:

The Housing (Scotland) Act 2006 states that the responsibility for the repair, maintenance and improvement of houses lies with the owner. Fife Council will provide information and advice to enable owners to carry out the works themselves. This includes information about common repairs, title burdens and resolving disputes etc. as well as advising about the importance of regular maintenance and repair. In some cases involving priority works, the Council may provide additional support to owners and landlords.

### Tenements Scotland Act 2004:

Definition of a tenement: *“tenement” means a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which— (a) are, or are designed to be, in separate ownership; and (b) are divided from each other horizontally, and, except where the context otherwise requires, includes the solum and any other land pertaining to that building or, as the case may be, part of the building; and the expression “tenement building” shall be construed accordingly.*

All tenements should have a scheme for management and maintenance. The scheme for an individual tenement is likely to include:

- the rules set out in the title deeds, according to the rateable value of each property or the floor area of each property compared to the total floor area of all properties
- equal shares, or;
- If the title burdens don't add up or are 'silent' then the rules set out in the Tenement Management Scheme (TMS) can be applied and will supersede what is in the title deeds.

There are three categories of scheme property, the structural parts of the building, (foundations, walls and roof), all parts of the building that are common property and all parts which the title deeds say are the responsibility of more than one owner.

The structural parts are the roof, the ground below the building and its foundations, the external walls, gable wall and any load bearing wall, beam or column (including cills and lintels) and any part that it is integral to the whole building. Structural parts don't include doors, windows or skylights that only belong to your flat or a chimney or chimney stack or individual pots that only belongs to your flat or any extensions which only belong to your flat.

Where there are several owners you will be liable to repair and maintain as 'burdened' in your title deeds (for common & mutual repairs, common ground and gardens, walls, fences etc.) ***if you don't have them you need to get a copy from your solicitor, mortgage lender or the Registers of Scotland.***

**Common-** for the whole building

**Mutual** – where only a few owners may be responsible for certain parts of the building.

**Individual Repairs** – for the parts of the building that you are solely responsible for (entrance doorways, stairs or chimney pots etc.)

### **Title Deed burdens:**

Section 111 of the Local Government Finance Act 1992, replacing the Abolition of Domestic Rates etc. (Scotland) Act 1987, froze rateable values as at 1 April 1989 for apportionment purposes. It is possible to examine the valuation rolls which are still kept by local authorities. If the burden uses the different allocation of feu duty among the flats in the block to set out the proportions due by each owner it will not matter that the feu duty itself has disappeared.

### ***Abolition of Feudal Tenure etc. (Scotland) Act 2000***

#### ***Extinction of superior's rights***

***A real burden which is enforceable by a superior shall be extinguished and any other real burden shall not be enforceable by a former superior.***

If owners experience difficulty in working out shares using rateable values or feu duty, they can amend their title deed provision using the procedure in sections 33 and 91 of the Title Conditions Act, but there are costs involved. **Section 33 of the Title Conditions Act.** If it is difficult to calculate the costs of repairs to a tenement between the owners (and all owners are in agreement about the proposed changes), then action can be taken by preparing a deed varying the title conditions, signed by all owners, a solicitor can then prepare 'Minute of Agreement' and register the deed in the property registers. The deed is then effective against the whole tenement and will be lodged with your title deeds.

The alternative is to change the titles by application to the Lands Tribunal. **Section 91 of the Title Conditions Act** allows the owners of 25% of the flats in a tenement to apply to the Lands Tribunal to change the burdens to equal shares or vary or discharge burdens which affect all or part of a community. The Lands Tribunal must notify all of the owners who are not applicants. Objections must be made within 21 days in writing. The Lands Tribunal will consider a series of factors. One of the factors which the Lands Tribunal will consider how practicable or costly it is to comply with the title condition as it is and also the purpose.

### **USEFUL LINKS:**

**Under One Roof** (impartial advice on repairs and maintenance for flat owners) is a new facility where you can find information regarding every aspect of owning and maintaining tenement property - <http://www.underoneroof.scot/>

**Owners Association:** It's simply a group of homeowners in a tenement who have decided to work together to tackle issues of shared concern, such as common repairs - <http://www.underoneroof.scot/articles/1105>

**Maintenance Bank Accounts:** Your local branch can give you advice on setting this up (most likely as a business account and they will advise on the requirements for the operation of the account) - <http://www.underoneroof.scot/articles/1110>

**Common Repair Common Sense** (detailed guide to common repairs) - <http://www.gov.scot/Resource/0042/00422341.pdf>

**Roads (Scotland) Act 1984 – Section 99** (prevention of flow of water etc. onto roads) - <http://www.legislation.gov.uk/ukpga/1984/54/section/99>

**The Office of Queen's and Lord Treasurer's Remembrancer (QLTR) Bona Vacantia** - The expression bona vacantia means ownerless goods. In Scots law, ownerless goods fall to the Crown. QLTR deals with the assets of missing persons and lost or abandoned property (commercial and domestic dwellings) - <http://qltr.gov.uk/content/bona-vacantia>