

# The Tenant Purchase of Apartments under the Housing (Miscellaneous Provisions) Act 2009

The Housing (Miscellaneous Provisions) Act 2009 (the “2009 Act”) introduces major changes to the way that housing authorities provide accommodation pursuant to its statutory obligations under the Housing Acts. A number of new schemes are introduced that will govern such matters as social and affordable housing, the letting of properties, and the purchase of a tenant of his or her property in incremental payments (an incremental purchase arrangement). Tenants holding property under schemes which have been abolished, (e.g. shared ownership leases) will be unaffected, but no new arrangements will be entered into under these old schemes. This article is concerned with a new innovation of the 2009 Act, the scheme introduced in Pt 4 relating to the tenant purchase of apartments.

## Designation

If a housing authority is the landlord of the apartments in an apartment complex, it may “designate” the complex to enable its tenants therein to purchase their apartments outright.<sup>1</sup> It may propose this designation if it is satisfied that a number of conditions have been met. These are as follows:

1. The sale is consistent with good estate management, management of its overall stock of dwellings and its objectives for the management and maintenance of dwellings as set out in its housing service plan.
2. The complex is suitable having regard to its physical layout, the cost of its annual upkeep and the number of apartments to be available for sale.
3. That the apartment is in good structural repair and condition (where structural work has been carried out in the past 10 years or a structural survey in the last five).
4. There are no plans to carry out improvement works or for the regeneration of the area where the apartments are situated (such plans as would be contained in the housing services plan or the housing action programme).

5. That it possible to transfer marketable title to the management company.
6. That none of the apartments are excluded from sale by regulation.<sup>2</sup>

If the housing authority is happy to proceed with the designation after a consideration of the above factors, it must then prepare a draft proposal specifying the apartment complex it wishes to designate.<sup>3</sup> As well as containing information on matters such as the sale of the apartments and transfer of the common areas to a management company, there must also be a proposal for the holding of a “tenant plebiscite” within three months of the housing authority adopting the proposal.<sup>4</sup> The tenants of the apartment complex are thus given an opportunity to vote on the purchase arrangements that are proposed. The proposal must also contain information on the terms and conditions of the sale to include, inter alia, the obligation to pay, and the amount, of the proposed management charges in the first year of purchase, the restrictions on resale of the apartment, the covenants in the assignment order together with the consequences for failure to observe these covenants.<sup>5</sup> The authority must set out its own functions with regard to the apartment complex together with the estimated purchase price for different types of apartments.<sup>6</sup>

The tenants are also to be informed by the authority about the draft proposal and to be given an opportunity to express their views on it. This includes the holding of information meetings on the proposal, as well as meeting with individual tenants with regard to the proposal.<sup>7</sup>

After this consultation, the manager may then submit the proposal to the authority (with or without any amendments he or she chooses to make) for adoption. The authority may adopt the proposal with or without alterations.<sup>8</sup> Where the housing authority is a local authority the adoption of the plan is a reserved function and subject to a resolution of its members.<sup>9</sup>

The manager has, however, a broad discretion not to proceed with the proposal if one of the necessary conditions set out in the Act is no longer satisfied or with regard to the views of the tenants or for “any other reason”. If there is a decision not to proceed then the tenants potentially affected by this must be advised of this.<sup>10</sup>

## Tenant Plebiscite

After the Authority adopts the proposal it must hold the “tenant plebiscite” within three months of the decision.<sup>11</sup> The vote is to determine the level of support for the designation of the apartment complex, as well as the willingness of potential purchasing tenants to run the

management company of the apartment complex.<sup>12</sup> The referendum is based on one vote for each apartment and not one vote for each tenant. Apartments previously sold under other powers of the housing authority are excluded from the vote.<sup>13</sup> Within two months of the proposal's adoption, the authority must send the ballot papers to each apartment together with a copy of the proposal and any other explanatory material.<sup>14</sup> Only a current tenant may vote by completing and returning the ballot in the manner prescribed by regulation.<sup>15</sup> Where an apartment has more than a single tenant, only a vote which is signed by a majority of them will be valid (i.e. a majority of the tenants must concur in the decision).<sup>16</sup>

At least 65 per cent of the tenants *entitled to vote* (i.e. in contrast to 65 per cent of the votes actually cast) must be in favour of the apartments being "designated" under the plan. Additionally, the number of voters who indicate their willingness to serve as directors of the management company must exceed the greater of the number of tenants represented in columns 2 and 3 (see Table below) (i.e. the number of tenants represented by the percentage rounded to the nearest higher whole number in column 2):

So, for example, in an apartment complex of eight apartments in which 12 people reside, at least 60 per cent of the 12 must indicate this willingness and this figure cannot fall below three. Sixty per cent of 12 is equal to 7.2 which would be rounded to eight, as the nearest higher whole number. Therefore, at least eight people must indicate their willingness for this condition to be satisfied.

Another example is where the apartment complex consists of five apartments (the minimum number to qualify as an "apartment complex" within the definition given in s.50(1)) containing five tenants. Sixty per cent

of five is three, which is also the minimum in column 2 and would be the minimum requirement.

#### *Lapse of Designation*

If no apartment is sold by the authority within the initial selling period set out below, the designation lapses.<sup>17</sup> The housing authority must then notify the management company in writing of the lapse. The management company must then take a number of further steps: 1. terminate the leases granted to the housing authority for each apartment, 2. transfer the ownership of the apartment complex to the housing authority, and 3. arrange for the winding up of the management company pursuant to the Companies Acts.<sup>18</sup> After all of this has been done, the housing authority then resumes its functions in relation to the management and control of the premises as set down in the Housing Acts.<sup>19</sup>

#### **Initial Selling Period**

Within six months of an apartment complex being designated, the authority must issue a written notice to tenants inviting applications to purchase their apartment.<sup>20</sup> The apartments are available for purchase during what is described as the "initial selling period". Apartments must be sold during this period as their designation lapses if this is not done.<sup>21</sup> The start date for the "initial selling period" is the date that an authority, in response to an application from a tenant which it has invited, "provides to the tenant the necessary information, documentation, particulars of title and terms and conditions of sale relating to the apartment concerned together with information and documentation relating to the management company".<sup>22</sup> The end of the period is normally three years after this date, but it can be extended by a further two years (prior to the initial three years

Class of apartment complex determined by the number of apartments comprised therein of which the housing authority is the apartment owner (1)	Minimum number of tenants in apartment complex willing to serve as directors of management company (2)	Minimum proportion of all tenants in apartment complex willing to serve as directors of management company (3)
Apartment complex comprising not more than 9 apartments	3	60%
Apartment complex comprising 10 to 19 apartments	6	40%
Apartment complex comprising 20 to 29 apartments	8	None
Apartment complex comprising 30 to 59 apartments	9	None
Apartment complex comprising 60 apartments or more	10	None

expiring) if it believes the minimum number of apartments available for sale in the complex will be sold during the extended period.<sup>23</sup>

### Management Company

#### *Conditions for Formation*

The manager of the housing authority must provide for the establishment of a management company when he or she is satisfied that the sales of at least the “minimum” number of apartments are ready to proceed within the initial selling period and that the number of tenants who are willing to serve as members of the management company exceeds half of that “minimum” number of apartments.<sup>24</sup> A sale is deemed ready to proceed when the tenant has signed the apartment assignment order, paid any deposit payable in respect of the sale and either give written notice to the housing authority of loan approval or otherwise satisfies the authority as to his or her ability to pay the monies that will become due in respect of the sale.<sup>25</sup> The “minimum number of apartments” again is calculated according to a table.<sup>26</sup>

The “minimum” number of apartments is the larger number of represented by columns 2 and 3 (below).<sup>27</sup>

So, for example, in an apartment complex of six apartments, column 2 would specify that two is the minimum number of apartment sales, while column 3 would set the number at three (35 per cent of six is 2.1 rounded to the nearest higher number is three). Three apartments would then have to be sold to satisfy the definition of “minimum” in this section.

In another example, take an apartment complex comprising 30 apartments. Column 2 specifies nine apartments as the minimum, while the figure at column 3 would be nine (30 per cent of 30). Nine apartments would then have to be sold as the “minimum” number.

#### *Establishment and Objects*

Management companies are formed under the Companies Acts, and are limited by share if there are six apartments or less in the designated apartment

complex, or by guarantee if there are more than six apartments in the complex.<sup>28</sup> The housing authority has some discretion in prescribing the objects in the memorandum of association of the company. However, certain objects must be included. Section 57(5) of the 2009 Act states these to be as follows:

- a) to take a transfer of ownership of a designated apartment complex in accordance with an apartment complex transfer order;
- b) in the case of apartments in the designated apartment complex which have not been sold by the housing authority under section 90 of the Principal Act, whether before or after the coming into operation of this Part, to grant a lease or sublease of the apartments to the housing authority in accordance with an apartment transfer order;
- c) to manage, control and maintain the common area, structures, works and services in accordance with *section 63(3)*;
- d) to carry out its functions in accordance with this Part.

It is specifically stated that the housing authority may further prescribe objects which are “reasonably necessary, proper for or incidental or ancillary to” attaining the above objects and are not inconsistent with its statutory duties.<sup>29</sup> Additionally, the articles of association must include provision for the levying and collection of a service charge, and the covenants and agreements relating to the designated apartment complex and the individual apartments in it.<sup>30</sup>

#### *Meetings and Reports*

The 2009 Act specifies a number of obligations of the management company in addition to its other statutory obligations (in particular under the Companies Acts).<sup>31</sup> The company is obliged to hold at least one annual meeting at which the “annual report” must be considered.<sup>32</sup> At least 21 days written notice must be given to each company member of

Class of apartment complex determined by the number of apartments comprised therein of which the housing authority is the apartment owner. (1)	Minimum number of apartment sales (2)	Minimum proportion of all apartments in apartment complex (3)
Apartment complex comprising not more than 19 apartments	2	35%
Apartment complex comprising 20 or more apartments	7	30%

the meeting and a copy of the annual report must be given to them at least 10 days prior to it.<sup>33</sup> The meeting must take part within a reasonable proximity to the apartment complex and at a reasonable time unless three quarters of the membership agree otherwise.<sup>34</sup>

#### *Transfer of Ownership to Management Company*

The housing authority must transfer ownership of the apartment complex to the management company "as soon as is practicable" after the company's establishment for nominal consideration (e.g. 1 euro, consideration which is sufficient but not adequate is good consideration in the eyes of the law).<sup>35</sup> This is done by means of "an apartment complex transfer order" which is a standard order in prescribed form. The order is subject to a number of terms and conditions. First, that the management company will grant a lease (or sub-lease) to the housing authority for each apartment in the complex and that the transfer is subject to any pre-existing tenancy agreements between the housing authority and the tenants of the complex.<sup>36</sup> Secondly, that the consent of the management company shall not be required to the subsequent sale or letting of apartments by the housing authority under the Housing Acts.<sup>37</sup> Thirdly, that the company will comply with the 2009 Act's requirements (which include its winding up) if the designation of the complex lapses.<sup>38</sup> The order is specifically stated not to imply any warranty as to the state of repair or condition or fitness for human habitation of the apartment complex or any of the individual apartments, unless this is provided in other enactments.<sup>39</sup>

It should be noted that the housing authority will continue to carry out its functions of management and control in relation to the apartment complex after this transfer of ownership. This duty continues until date of the sale of the first apartment in the complex to a tenant.<sup>40</sup> At that point, the responsibility for effectively managing the complex passes to the management company.<sup>41</sup>

#### *Lease of Apartments to Housing Authority*

The lease which must be granted by the management company to the housing authority in respect of each individual apartment is in a prescribed form called an "apartment transfer order".<sup>42</sup> It is granted for nominal consideration and the order will state that it vests the interest specified in the housing authority from the date of the order. The other terms of the order mirror many of the terms that are contained in the apartment complex transfer order. The management company is entitled to be reimbursed its reasonable costs in relation to the transfer ownership and granting leases to and from the housing authority, as well in relation

to the duties it must perform on the lapse of the designation.<sup>43</sup>

#### *Lease of Apartment by Housing Authority to Tenant*

A housing authority "sells" an apartment to a tenant by assigning the lease of that apartment granted to them by the management company by means of a form called an "apartment assignment order".<sup>44</sup> The assignment is subject to the terms of the charging order and terms that the apartment be used as a dwelling by the purchaser (or a member of his or her family) and no part of it be alienated during the charged period unless the prior written consent of the authority is obtained. It is also subject to terms controlling the resale of the apartment. The housing authority manager is forbidden from signing the assignment order if the initial selling period has expired, or if he or she is not satisfied that the sales of the minimum number of apartments is ready to proceed within four weeks of the signing of the order, or that the minimum number of tenants have not indicated their willingness to serve on the management company.<sup>45</sup>

The tenant must pay a deposit prior to signing the order and if he or she withdraws from the sale within six months from the signing of the order, the deposit is non-refundable.<sup>46</sup> If the authority decides not to proceed with the sale it must notify the tenant in writing, refund any deposit paid by the applicant (together with interest) as well as any reasonable legal expenses incurred as a result of the proposed purchase.<sup>47</sup>

There are other reasons which may prevent an authority from proceeding with the sale of a property to a tenant. First, if the tenant was in arrears of rent for an accumulated period of 12 weeks in the three years preceding the application and has not entered into an arrangement with the authority to pay the money owing; secondly, if the authority believes it is not in the interest of good estate management to proceed with the sale on the basis of a structural survey; thirdly, if the authority is not satisfied that the number of tenants willing to serve as part of the management company is sufficient; and fourthly, if the designation of the complex has lapsed.<sup>48</sup>

#### *Membership of Management Company*

Each apartment owner is automatically a member of the management company and the voting rights are based on apartments and not the number of tenants, i.e. each apartment has one vote, not each tenant.<sup>49</sup> The housing authority may nominate directors for election in the same proportion as to the proportion of the apartments it still holds in the complex. It may, however, decline to do so if the authority only owns less than 20 per cent of the apartments in the

complex.<sup>50</sup>

### *Service Charge*

The management company must prepare an estimate of the apartment complex service charge prior to the first apartment being sold to a tenant and its taking over the management of the complex. This is defined as the amount required to “discharge ongoing expenditure reasonably incurred on the insurance, maintenance ... and repair of the common areas ... and on the provision of common or shared services ...”.<sup>51</sup> The estimate must be considered by a general meeting before it is levied and may be amended by a 60 per cent majority vote, or voted down by a 75 per cent majority.<sup>52</sup> In the latter circumstance, the charge levied in the previous year is then to take effect instead. The proportion of the charge levied on each individual apartment is determined by its floor area, i.e. the proportion of the floor area of the apartment as against the aggregate floor area of all of the apartments in the complex is the proportion of the service charge payable.<sup>53</sup> Any excess monies after expenditure can be applied by the management company to the sinking fund.<sup>54</sup>

### *Sinking Fund*

The management company must also establish a “sinking fund” before the sale of the first apartment in the complex to a tenant. The purposes of this fund are to provide for expenditure in relation to refurbishment, improvement, professional advice and maintenance of a non-recurring nature.<sup>55</sup> Maintenance of a non-recurring nature is not expenditure which generally arises every year and must be certified as such by the directors of the management company and approved at meeting by the members.<sup>56</sup> A yearly estimate of the sinking fund contribution must be prepared by the management company which is apportioned between the apartments in the same way as the service charge.<sup>57</sup> The minimum amount that is to be contributed by any apartment must not be less than €200.<sup>58</sup> The sinking fund must be in a separate account and identified as such. The funds can only be used for the purposes set out above.<sup>59</sup>

### *Levying the Charge*

Both the sinking fund and the management fees can be levied by the management company issuing a single request for payment of these annual charges and setting out the basis of the calculation of the fees.<sup>60</sup> If the charges are not paid within six months of falling due within the meaning of the order, the management company must notify the housing authority of this in writing.<sup>61</sup>

### *The Support Fund*

On the sale of the first apartment to a tenant, the housing authority is obliged to establish an “apartment complex support fund”. The purpose of this fund is to provide assistance to a management company in respect of refurbishment, improvement or maintenance of a non-recurring nature over the property if the sinking fund of the company is inadequate.<sup>62</sup> The authority need not maintain a separate account in respect of each apartment so long as the expenditure in respect of different complexes can be identified.<sup>63</sup> The fund consists of a current account and an investment account.<sup>64</sup> Monies are paid into the current account by the authority where they are required for the purposes of making a payment to a sinking fund or defraying the authority’s costs under this section.<sup>65</sup> All other monies are paid to the investment account.<sup>66</sup>

The management company must request the housing authority to transfer monies to the sinking fund and the authority will then require the company to provide details of the proposed works, including drawings and estimated costs, financial information, such as the company’s records relating to the management, maintenance and repair of the common areas, and must also carry out or facilitate any inspections, surveys or tests required by the housing authority.<sup>67</sup>

The decision to transfer funds is clearly subject to funds in fact being available in the support fund.<sup>68</sup> Furthermore, the authority may refuse payment if it believes the proposed works are not in the interests of good estate management; that the management company is not in a position to meet the costs of the works even including the requested monies and borrowings; that the works are necessary because the management company has failed its duty to manage the estate (including the failure to collect the service charges) or the monies may be used for purposes other than that proposed.<sup>69</sup>

If, however, the management company decides to pay the monies, it has a broad discretion as to how this is to be done. It may pay less than the amount requested at a time and in manner it deems reasonable (such as in instalments) and attach conditions relating to the works to be carried out as it deems fit.<sup>70</sup> The management company may also carry out (or require the management company to carry out) surveys and tests to determine if the works were done.<sup>71</sup> Any monies not used for the works must be repaid to the authority within two months of a written demand for payment.<sup>72</sup> If there is a dispute between the authority and the management company relating to a demand for payment or the failure to observe a condition relating to the works that cannot be resolved, it must be referred

to arbitration.<sup>73</sup>

#### *Accounts*

The management company has the normal obligations with regard to the maintenance of proper books and accounts.<sup>74</sup> It must submit a copy of its annual audited accounts within four months of the end of the financial year to which they relate.<sup>75</sup>

#### *Property Services Agreement*

A management company may “contract out” many of its management functions under a property service agreement. It may enter into such an agreement with an approved body or a housing authority or a company formed by a housing authority for this purpose.<sup>76</sup> Such agreements are not to last longer than five years and are subject to standard terms and conditions set out in Sch.4 to the 2009 Act.<sup>77</sup>

#### *Charging Orders*

The housing authority will make and register a charging order against the property “as soon as is practicable” after the apartment purchase charging the property with the equivalent of a percentage share of their interest.

As in other schemes charging orders are deemed to be “mortgages by deed” for the purposes of the Conveyancing Acts<sup>78</sup> and the authority has the same rights of possession, sale, and appointment of a receiver over the property in the event of a violation of the terms of the order.<sup>79</sup> These charges will be identified as “... the charge referred to in section 74(2) of the *Housing (Miscellaneous Provisions) Act 2009*.”<sup>80</sup> A housing authority may agree with a financial institution to cede priority to a mortgage held by that institution if that mortgage is to enable the purchaser obtain finance to purchase the apartment, to refinance an existing arrangement or to obtain a further advance of monies from that institution for any purpose.<sup>81</sup> A Charging Order does not class as a conveyance under s.3 of the Family Home Protection Act 1976 and, as such, its validity is not dependent on the consent of any non-owning spouse where the property is a family home.<sup>82</sup>

#### *Reduction of the Charged Share*

A reduction of the charged share will be applied annually by the housing authority in equal amounts. These are referred to as “incremental releases” and

are applied on the anniversary of the charging order. No such release is effective, however, until five years after the assignment order is made. On that date, the cumulative releases for the five-year period are applied provided that the purchaser or a member of his household has been in occupation of the apartment as his normal place of residence.<sup>83</sup> The releases are then applied on an annual basis thereafter. On request by the purchaser, the housing authority must give a written statement indicating the amount of releases that have been applied under the Order.<sup>84</sup> The releases will continue to be applied until the expiration of the charged period or the resale of the apartment by the purchaser.<sup>85</sup> Providing that all of the terms and conditions of the assignment and the lease have been complied with at this stage, the authority will execute a discharge of the Order and pay the expenses of so doing.<sup>86</sup>

The housing authority may suspend the reduction of the charged share in respect of any year if the terms and conditions of the apartment assignment order have not been complied with.<sup>87</sup> The housing authority must notify the purchaser in writing as to any reduction and the reasons for it.<sup>88</sup> It must also give a written statement to a purchaser on the expiration of the charged period as to the amount outstanding on the charge.<sup>89</sup> The purchaser then has two months from receipt of the statement the amount outstanding, otherwise the authority can recover it as a simple contract debt.<sup>90</sup>

#### **Conclusion**

Although, as is clear from the above summary, the scheme is somewhat complex, it is to be commended in its design. It seeks to ensure that no purchase scheme can proceed unless there is clear evidence that a significant number tenants support the sales and that a sufficient number will be active in the management of the apartment complex through the auspices of the management company. While some of the conveyancing aspects are somewhat technical, the provision for a sinking and support fund is a welcome requirement and will, hopefully, ensure that funds are available for the maintenance of these complexes. If successful, such schemes could be widely utilised, particularly in urban areas.

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<sup>74</sup> Section 51(1).

<sup>75</sup> All of these factors are set out in s.51(2).

<sup>76</sup> Pursuant to s.52(1). It may also include a map of the property in question s.52(4).

<sup>77</sup> Section 52(1)(b).

<sup>78</sup> Section 52(1)(c).

<sup>79</sup> Section 52(1)(d)(e). Any other relevant information to the

proposal must also be included s.52(1)(f).

<sup>7</sup> Section 52(3).

<sup>8</sup> Sections 53(2)(3).

<sup>9</sup> Section 53(4).

<sup>10</sup> Section 53(2).

<sup>11</sup> Section 52(1)(b)(i).

<sup>12</sup> Section 54(1)(a)–(b).

<sup>13</sup> That is pursuant to s.90 of the Housing Act 1966.

<sup>14</sup> This may be by ordinary post or in another form prescribed by regulation, s.54(4).

<sup>15</sup> Section 54(3).

<sup>16</sup> Section 54(4).

<sup>17</sup> Section 55(3).

<sup>18</sup> Section 61(1).

<sup>19</sup> Section 61(2).

<sup>20</sup> Section 56(1).

<sup>21</sup> Section 55(3).

<sup>22</sup> Section 56(3).

<sup>23</sup> Pursuant to s.64(4). Any extension is a reserved function of a local authority and must be exercised by a resolution of the members.

<sup>24</sup> Sections 56(5)(a) and (b).

<sup>25</sup> Section 56(7).

<sup>26</sup> Set out at s.56(6).

<sup>27</sup> The number of apartments represented in column (3) is rounded to the nearest higher number: s.56(6)(b).

<sup>28</sup> Section 57(2)(a)(b).

<sup>29</sup> Section 56(6).

<sup>30</sup> Section 57(7)(a)(b).

<sup>31</sup> Section 58(6).

<sup>32</sup> Section 58(1).

<sup>33</sup> Sections 58(3) and (4).

<sup>34</sup> Section 58(5).

<sup>35</sup> Section 59(1).

<sup>36</sup> Section (2)(a)(b). This includes any lease entered into by the housing authority for the purposes of a sale pursuant to s.90 of the Housing Act 1966.

<sup>37</sup> Section 59(2)(c).

<sup>38</sup> Section 59(3)(d); these requirements are set out in s.61.

<sup>39</sup> Section 59(3).

<sup>40</sup> Section 63(1). If charges for an apartment that has been sold in the complex pursuant to s.90 of the 1966 Act are paid to the management company in respect of this period when the housing authority are still exercising their statutory functions, they must be repaid to the housing authority, s.63(2).

<sup>41</sup> Section 63(3).

<sup>42</sup> Section 60(2).

<sup>43</sup> Section 62.

<sup>44</sup> Section 64(2). As with other such sales the sale of the apartment does not imply any warranty as the state of repair or condition of the premises, or its fitness for human habitation, s.64(8). Nor does a local authority require the consent of its members as in other land sales, s.64(10).

<sup>45</sup> Section 64(3). The number of tenants willing to serve must be a number that represents half of the minimum number of apartments that must be sold, s.64(3)(c).

<sup>46</sup> Section 64(6).

<sup>47</sup> Section 64(7).

<sup>48</sup> Section 64(9).

<sup>49</sup> Section 65(2)(3)(4). This also applies to apartment owners who purchased their apartments under s.90 of the 1966 Act or their successors in title, s.65(1)(b)(i)(ii). Apartments also include “community apartments” within the meaning of the Act, s.65(1)(a). If the apartment is transferred the new member automatically becomes a member of the management company, s.66(1). However, the management company is still obliged to issue a

membership certificate to the person and ensure the register of membership is updated, s.66(2).

<sup>50</sup> Section 65(5)–(6).

<sup>51</sup> Section 67(2). It must be calculated by reference to actual or projected expenditure for the financial year in which it is levied, s.65(2). The management company is also obliged to maintain proper records of any expenditure, s.67(10). There is also provision whereby tenants who have acquired their apartments under s.90 of the 1966 Act can be levied, s.67(8).

<sup>52</sup> Section 67(4)(6).

<sup>53</sup> Section 67(7).

<sup>54</sup> Section 67(11). Any such excess or a shortfall must be taken into account when preparing the estimate for the following year, s.67(9).

<sup>55</sup> Section 68(1).

<sup>56</sup> Section 68(2).

<sup>57</sup> i.e. according to floor space, s.68(3)–(4).

<sup>58</sup> Section 68(3)(b). If the smallest amount contributable is equal to €200 than the management company may adopt the estimate, if greater than €200 they must get that amount approved in a general meeting called for that purpose, s.68(3)(c)(d).

<sup>59</sup> Section 68(5).

<sup>60</sup> Section 69(1). If the tenant fails to pay within the time allowed in the transfer order, the charges begin to bear interest at a rate specified in that Order, s.69(4).

<sup>61</sup> Section 69(5).

<sup>62</sup> Sections 70(1) and (4).

<sup>63</sup> Section 70(3).

<sup>64</sup> Section 70(12).

<sup>65</sup> Section 70(13).

<sup>66</sup> Section 70(14). Any investments from the account must be in euro and invested in the State, in either securities (excluding shares) or by way of deposit with a financial institution or “in short term financial products, such as certificates of deposit or commercial paper, issued by any person”, s.70(17).

<sup>67</sup> Section 70(5).

<sup>68</sup> Section 70(4).

<sup>69</sup> Section 70(6).

<sup>70</sup> Section 70(7).

<sup>71</sup> Section 70(9).

<sup>72</sup> Section 70(1). The authority may also recoup its costs under this section from the fund, s.70(11).

<sup>73</sup> Section 71.

<sup>74</sup> Section 72(1)(2).

<sup>75</sup> Section 72(3)(a). This does not apply until more than 50 per cent of the apartments are sold, s.72(4). It must also provide a copy of the accounts to any member if requested, s.72(3)(b).

<sup>76</sup> Section 73.

<sup>77</sup> Section 73(4).

<sup>78</sup> Any reference to the Conveyancing Acts 1881 to 1911 shall now be construed as a reference to the Land and Conveyancing Law Reform Act 2009 by virtue of s.8(2)(b) of that Act.

<sup>79</sup> Sections 74(6) and (7).

<sup>80</sup> Section 74(8).

<sup>81</sup> Sections 74(10) and (11).

<sup>82</sup> Section 74(13).

<sup>83</sup> Section 74(4)(b).

<sup>84</sup> Section 74(5).

<sup>85</sup> Section 74(4)(a). Any amount repayable may be recovered by the Authority as a simple contract debt, s.74(12).

<sup>86</sup> Section 74(14).

<sup>87</sup> Section 75(1).

<sup>88</sup> Section 75(3)(a).

<sup>89</sup> Section 75(3)(b).

<sup>90</sup> Section 75(4).