

Tenement
flat



Sub-divided
house



Who Rules the Roof?

Common Repairs: how a major change in property law will affect you and your neighbours.

Ex-council
flat



'four-in-
a-block'



Modern
apartment



THE TENEMENTS (SCOTLAND) ACT 2004

Are you one of the owners affected?

Although it is called the Tenements (Scotland) Act 2004 the new law affects every owner (home, business or shop) in a building which is divided into two or more flats on different floors.

What the new law can do for you

The Act aims to ensure that the communal parts of buildings are kept in good repair. It sets up a decision-making structure that should make it easier to carry out repairs and maintenance and deal with disagreements between owners. In most cases, this will mean that common repairs can be carried out with the agreement of the majority of owners.

Filling the gaps

Your Title Deeds will continue to be the key legal guardian of your rights and duties when it comes to common repairs. But where there are gaps in your Deeds, or where clauses are unworkable, the new rules will apply instead.

From now on, if you want to organise a common repair you will need to be familiar with:

- What your Title Deeds say, and
- What the Tenements Act says

Read on for details of what the Act says. If you are confused about your Title Deeds you should consult your solicitor or property agent.

homeworks

help and advice for homeowners in Edinburgh

Homeworks is part of the City of Edinburgh Councils Private Housing Services and offers a range of impartial advice and practical assistance to home-owners on how to improve, repair or maintain their property.

Full details can be found at www.edinburgh.gov.uk or by phoning 0131 529 7240.

homeworks

City of Edinburgh Council

4 Queen Street

Edinburgh EH2 1JE

homeworks@edinburgh.gov.uk

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What you need to do now

Check your Title Deeds carefully

- Your Title Deeds prove that you own your flat and define where the boundaries are. You can get copies of your own, or your neighbours', Title Deeds from the Registers of Scotland for a small fee. (See Resources on p14)
- Your Title Deeds might contain a Deed of Conditions or other document that specifies what counts as repairs and maintenance, who is responsible, who owns what and how decisions should be made. If so, follow the rules in the deed or other document. If your Deeds don't cover some or all of these matters, ask your solicitor about using the Tenements Act to sort out disagreements.

Organise

- Talk to your neighbours. Consider setting up an "Owners' Association" (if you don't already have one) to decide which repairs are needed – and which are the most urgent. Contact **homeworks** (see p14) for advice on setting up an Owners Association.

New rules on insurance

- Check that your building insurance is up to date. The new law makes it compulsory to insure your flat, and any parts of the building that you are responsible for, to full reinstatement value, regardless of what your Deeds say. Bear in mind that reinstatement value is likely to be higher than the market value of your home.

Check your deeds

What to do if you've found gaps or defects in your Title Deeds

If your Title Deeds were drawn up recently, they may well contain effective procedures for repairing and maintaining communal parts of the building.

However, many older Deeds don't allow for efficient management and maintenance. But even if this is the case, your Title Deeds still take precedence over the new law.

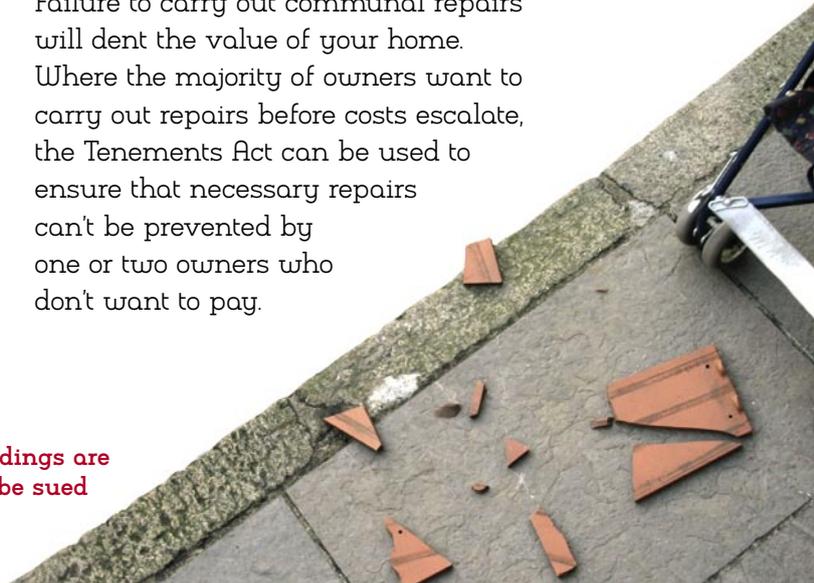
But if your Deeds don't fully cover certain vital common repairs, such as repairs to the roof or stairs, then the Tenements Act fills the gaps. It sets out a structure where each flat gets one vote and decisions are reached **by majority**.

Before, if your Deeds said nothing about how decisions were to be made, you would have had to get the agreement of every owner – this prevented many repairs from going ahead.

Want to keep your property in good condition?

Failure to carry out communal repairs will dent the value of your home. Where the majority of owners want to carry out repairs before costs escalate, the Tenements Act can be used to ensure that necessary repairs can't be prevented by one or two owners who don't want to pay.

Badly maintained buildings are dangerous – you could be sued



Getting organised

You and your fellow owners could consider using architects, property managers or surveyors when deciding which projects are the most urgent (see pp14-15).

What can owners deal with?

Unless the Deeds say differently, owners can decide what needs to be done, appoint contractors to carry out the work, organise surveys and appoint property managers. If they want, owners can install door entry systems and arrange common insurance.

It is a good idea to set up an owners' association to help organise common repairs and maintenance. However this is not a requirement.

How do owners make communal decisions?

Unless your deeds say differently:

- Each flat affected gets one vote and decisions are reached by majority
- You must give 48 hours notice of a meeting – or speak to all the other owners individually
- Tell owners about decisions as soon as practical
- Majority decisions **are binding** on all existing owners and can be enforced by a single owner
- Those who were not in favour, can appeal to the sheriff within 28 days
- An owner who is due to pay 75% of costs can annul the decision within 21 days.

Who is responsible for what?

INDIVIDUAL RESPONSIBILITY

Anything serving only one flat, including the door from the stair, its windows and the inside of walls, floors and ceilings to the halfway point with the next property. You are solely responsible for all repairs and maintenance to your own flat.

MUTUAL RESPONSIBILITY

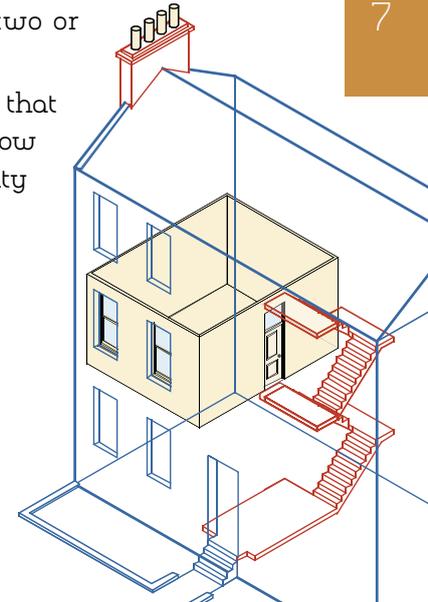
Mutual property is anything used by two or more flats including the stairs, stair windows, chimney-stacks, service cables, pipes etc. Repairs to mutual parts of the building should be paid for equally by all who use that part – unless your Deeds say otherwise.

'SCHEME' (Common) PROPERTY

This is the most important part of the new law. It outlines all the parts of the building where **maintenance is paid for by all owners**. These include: the roof, the foundations, external walls and any other part of the property which the Title Deeds set out as being the property of two or more owners.

It is important to note that paying for roof repairs now becomes the responsibility of every owner in the building – **unless** your Deeds say otherwise.

- Individual Responsibility
- Mutual Responsibility
- Scheme Responsibility



Questions & Answers

A majority of owners have agreed to carry out common repairs in our tenement. Do I have to pay for my share of the costs if I did not agree to the works?

Yes. Unless your Deed of Conditions say otherwise, and so long as proper procedures have been followed, you are liable to pay your share. If you do not pay, your co-owners can now take legal action to recover your share of the costs. You can appeal to the Sheriff Court.

We've agreed a programme of common repairs, but one owner has now decided to sell. Do we have to start again?

No. Each owner becomes responsible for their share of the bill once the final

decision is made. Someone who has moved may be hard to trace, so owners can protect themselves by serving a notice in the Land Register or Register of Sasines 14 days before a sale takes place. Then they can choose whether to ask the previous owner **or** the new owner to pay up. New owners can recover their costs from the seller.

How will disputes among neighbours be sorted out?

A lot of disagreements can be sorted out by a neutral mediator, such as a property manager. If there is a disagreement, then the Sheriff Court is the final decision-maker on all aspects of the Tenements Act. For instance, if you don't agree with

a stair decision you have 28 days in which to appeal to the Sheriff Court. The Sheriff can overturn any decision he or she decides is not in the interests of all of the owners, or is unfairly prejudicial to one or more owners.

I suspect that one of my neighbours has inadequate building insurance. Can I do anything about it?

Yes. The new rules over-ride anything said in the Title Deeds about insurance. From now on every owner is obliged to carry enough buildings insurance to pay for full reinstatement of the flat and other parts of the building they are responsible for. Bear in mind that 'full reinstatement' will usually mean more

than the market value of your home. You are entitled to ask your neighbours for evidence that their insurance is fully paid up. Owners can set up a common policy and divide the costs as they wish.

My upstairs neighbour won't repair his windows and dry rot is spreading into the floor joists. What can I do?

You can insist that repairs are carried out if the support or shelter of your flat is being reduced. The same goes for alterations that would reduce natural light in any other part of the building. This applies to **all flats** regardless of the Deeds.



Talking to your neighbours can remove any misunderstandings!

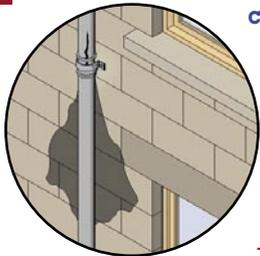
The builders needed access to my flat as part of a common repair, but damaged my plasterwork. Do I have a claim?

Yes. Owners must allow reasonable access for common repairs and inspections. But your flat must be put back into 'no worse' condition than it was before. If there is damage, then that must be paid for by the owners who required you to give access to your flat. If the builders were negligent, owners would be entitled to claim from the builders.

What if an owner goes bankrupt or can't be traced?

The other owners will have to cover that person's share of management costs and

**Leaky pipes don't just look bad
- they damage your property**

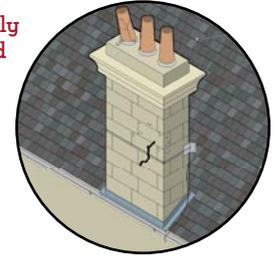


repairs to start with. It may be possible to recover these costs at a later date if the flat has a value or if there are any traceable assets – seek legal advice if large sums are involved. If one owner simply cannot pay their share, the other owners may decide to share the costs equally between them. Registers of Scotland (see p14) can help you identify the owner of a property in your building.

There's nothing in my Title Deeds about the roof, but the top-floor owner is asking me for a share of the costs. Can she do this?

Yes. In this case each owner now has to share costs of repair and maintenance of the roof.

Checking your roof regularly
stops problems spreading and
saves you money



Should every flat in the building pay the same share towards repairs?

In most cases, yes. If flats are all roughly the same size, then they should pay the same share. But if there is a big difference in size and the biggest flat is more than 50% larger than the smallest, then repair costs must be divided according to floor area. If you hire a professional property manager, fees should be divided equally among all flats, no matter what size.

How is my floor area calculated?

It is the total floor area bounded by the outer walls of your flat, including the loft or basement (unless these are only used for storage).

One flat owner won't pay up. She says her ex-husband is still a joint owner and that he should pay. Can we force her to pay?

When a flat has more than one owner, either of them can be required to pay the full share of costs – even if they have separated. It will then be up to him or her to recover the other owner's share.

How do we find out who owns a flat?

Registers of Scotland will be able to tell you who owns a flat and where they were living when they bought the flat. They may also be able to tell you if they own other property.

How do I give my neighbours notice of a repair decision?

You can do it by post, fax or email – either to the owner or his or her agent (such as a solicitor). If you don't know who the owner is, or if they are uncontactable, you can post the notice through their letterbox addressed to 'The Owner.'

We want to paint the stair, but one neighbour won't pay because she says that's not a repair. Is she within her rights?

If she is a joint owner of the stair then she has to pay her share of all maintenance costs. These include cleaning, painting,

gardening, routine work, repairs and 'incidental improvements' such as installing a new street door.

I'm still paying feu duties, how can I put an end to them?

When a property changes hands, the feu duties are usually 'redeemed'. But owners of some properties that have not been bought or sold for many years may still be liable to pay duties. The Scottish Parliament recently passed the Abolition of Feudal Tenure

(Scotland) 2000 Act and you must 'redeem' your feu duties now if your former "feu Superior" asks before November 2006.

**CHECK
YOUR
DEEDS**

My neighbour has given me notice that she wants to change her Title Deeds, but I think it might be to my disadvantage. What should I do?

Take action as soon as you hear that a neighbour wants to change their Deeds. You may only have a few weeks, or less, to challenge their proposed changes. Speak to your solicitor urgently.

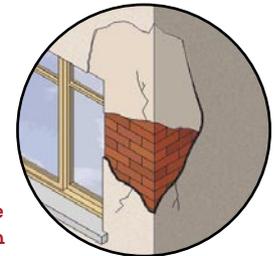
Can I change some of the conditions in my Title Deeds?

Yes. Under the Title Conditions (Scotland) Act 2003, you can apply to change conditions in your Title Deeds. You could use this new right to improve the rules for carrying out repairs. If the majority of owners in your building are in favour

of changing conditions, it may be possible to achieve improvements. You should ask your solicitor to advise you.

Our Title Deeds say that flats should only be occupied by a single family. The owner upstairs has let his flat to a group of noisy students, what can we do about it?

You should take action quickly. If no-one challenges this breach of title conditions within five years, then that condition is removed and you won't be able to get that condition put back later. Speak to your solicitor about challenging the breach of conditions.



Blemishes like this may be a sign of worse happening underneath

Resources

To find your title deeds...

Register of Sasines/Land Register

Erskine House
68 Queen Street
Edinburgh EH2 4NF
0845 607 0161
www.ros.gov.uk

To find an architect...

The Royal Incorporation of Architects in Scotland

15 Rutland Square
Edinburgh EH1 2BE
United Kingdom
0131 229 7545
www.rias.org.uk

To find a building surveyor...

Royal Institution of Chartered Surveyors

Surveyor Court
Westwood Way
Coventry CV4 8JE
0870 333 1600
www.rics.org

To find a mediator...

Edinburgh Community Mediation Service

27 York Place
Edinburgh EH1 3HP
0131 557 2101

To find a solicitor...

Law Society of Scotland

26 Drumsheugh Gardens
Edinburgh EH3 7YR
0131 226 7411
www.lawscot.org.uk

for advice and information...

homeworks
City of Edinburgh Council
4 Queen Street
Edinburgh EH2 1JE
0131 529 7240

Emergencies...

In case of property related emergencies, contact Edinburgh Council's 24 hour Emergency Response Team. 0131 200 2000

Publications...

COMMON REPAIRS COMMON SENSE

Communities Scotland has produced a free detailed information leaflet covering the Tenements Act. Ask at your local library or contact:

homeworks
0131 529 7240 or

Homepoint
0131 313 0044
www.communitiesscotland.gov.uk

TENEMENT HANDBOOK

Detailed advice about repairing older tenement properties.

To buy a copy visit:
www.thetenement.co.uk

THE TENEMENTS (SCOTLAND) ACT 2004

The Stationery Office Scotland Bookshop

71 Lothian Road
Edinburgh EH3 9AZ
0870 606 5566
www.hms.o.gov.uk

Edinburgh Property Managers Forum

Property Managers are employed by owners of flats to manage common repairs and maintenance.

The Edinburgh Property Managers Forum has agreed a detailed voluntary code of practice which will help ensure good service to clients.

Charles White Ltd
92 Morningside Road
Edinburgh EH10 4BY
0131 447 8191
www.charleswhite.co.uk

Edinburgh Stair Partnership
The Edinburgh Stair Partnership (ESP) is a City of Edinburgh Council initiative offering a property management and factoring service to help flat owners improve the maintenance and repair of their tenement property in an impartial and cost effective way.

ESP not only carries out annual surveys, but will manage any repairs which need to be carried out.

City of Edinburgh Council
Housing Department
4 Queen Street
Edinburgh EH2 1JE
0131 529 7234
www.edinburgh.gov.uk/ESP/

Factotum
63 Dublin Street
Edinburgh EH3 6NS
0131 539 1100
www.factotum.co.uk

James Gibb Property Management
4 Atholl Place
Edinburgh EH3 8HT
0131 229 348
www.jamesgibb.co.uk

McBride Property factors Ltd
20 Forth Street
Edinburgh EH1 3LH
0131 550 0800
www.mcbrideproperty.com

Ross & Liddell
6 Clifton Terrace
Edinburgh EH12 5DR
0131 346 8989
www.ross-liddell.com

Trinity factors
209 Bruntsfield Place
Edinburgh EH10 4DH
0131 447 9911
www.trinityfactors.co.uk

