Management and Maintenance of Flats in Multiple Ownership

Multi-family Multi Story Buildings

The Role of Homeowners Associations

Ir. Claudio Acioly Jr.
c.acioly@ihs.nl
1. Definitions

Common understanding of meanings and concepts.
Denominations, Meanings, Translations of Terms

<table>
<thead>
<tr>
<th>Housing Association-HA</th>
<th>Cooperator</th>
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<tbody>
<tr>
<td>Housing Corporation-HC</td>
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<td>Owers Association-OA</td>
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<td>Homeowners Association-HOA</td>
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<td>Condominium Association</td>
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<td>Condominium</td>
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<td>Community of Owners</td>
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<td>Privately Operated Foundation</td>
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2.

Defining the Problem

Setting a common understanding of the key challenge.
Common Problems Found in Many Countries regarding the maintenance & management of multi-family multi-story apartment buildings:

- Ignorance from part of Owners about their rights and obligations
- How to organise repair and maintenance?
- What does it mean “owners’ participation” in housing stock management?
- What practical arrangements and support exist to help owners manage their flats?
The PROBLEM?

POLICY

MANAGEMENT

FINANCIAL
Government support roles & responsibilities

Regulatory and organisational frameworks. Support to owners. Collective arrangements, common property management

Owners

Financial support, credit provision, programme support.
Problem Resolution Involves Many Actors

Central Gov

Financial Institution

Development Cooperation

Municipal Gov

NGO

Private Sector

Owners
The PROBLEM becomes SOCIAL!

POLICY

- Promote commitment
- Boost social mobilisation

SOCIAL

MANAGEMENT

- Housing Alternatives
- Support systems
- Training & Management Support

FINANCIAL
KEY QUESTION for BULGARIA:
How to organise repair and maintenance and establish practical, legal and financial arrangements that help apartment owners to fulfill their individual responsibilities for repair & maintenance in multi-story & multi-family apartment blocks??
The Management PROBLEM

Tasks involved in management of a block of flats in multiple ownership are the same in all countries.

- Flat owners are physically interdependent
- Owners are financially interdependent as well.
- Also social interdependency
- Legal arrangements
- Practical arrangements
- Organisational arrangements
- Financial arrangements
3. Responsibilities

Individual & Collective Interests and obligations in a multi-family environment.
<table>
<thead>
<tr>
<th>House</th>
<th>X</th>
<th>Individual Apartment</th>
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<tbody>
<tr>
<td>• Personal choices</td>
<td></td>
<td><strong>Interdependency:</strong></td>
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<tr>
<td>• Allowed to let it deteriorate</td>
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<td>• Social</td>
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<td></td>
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<td>• Physical</td>
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<td>• Financial</td>
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</table>
Physically Interdependent: lower apartments supports upper apartments.

Financially Interdependent: implications for owners’ rights and responsibilities

Affects safety and security of another

Rights are limited but responsibilities high

Rules governing behavior on common spaces and individual residences

Socially Interdependent: people live above, below, on either side

Maintain certain standards, no alterations without consultation
Key Technical Elements:

- Structured walls
- Roof
- Foundations
- Facades
- Basements
- Staircase
- Entrance
- Corridors
- Accesses
- Laundry room
- Surrounding land
- Elevators / lifts
- Common space for heating & boilers

Co-owners

Every owner has the right to have say in decisions over management
Key Elements:

- Structured walls
- Roof
- Foundations
- Facades
- Basements

Co-owners

Every owner has the right to have say in decisions over management

Constraints and Choices as standards

Building Consensus

Binding Decisions

AFFECTS ALL WHO AGREE OR DISAGREE

Common Property

- Staircase
- Entrance
- Corridors
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- Surrounding land
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Every owner has the right to have say in decisions over management.

Constraints and Choices as standards

Building Consensus

Binding Decisions

AFFECTS ALL WHO AGREE OR DISAGREE

Participation is a MUST!

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Arrangements for Collective Management

Enables Decisions to be taken
Enable Decisions to be implemented

- Periodic Inspection
- Repairs & Management
- Financial Management
- Planning Cyclical Maintenance
- Supervision & Performance Monitoring
- Services
- Identifying Contractors
- Tendering Work
- Administration
- Insurance
- Planning Cyclical Maintenance

Need for Decision Making
Need for Record Keeping Structure
Changes in Relations

- Owner
- Bank
- Home Owners Association
- Private Sector
- Central Gov
- LocGov

Housing Maintenance & Capital Repairs

New Roles
New Responsibilities
Housing Stock Management & Maintenance

Cyclical Maintenance & Renovation

Regular Maintenance, repair, safety & cleaning

Contracted Property Management Company

Condominium Officer

Owners Assembly

Appointment & election

Reporting

Homeowners Associations
Key Elements

- Statute
- Internal Rules
- Legal Status
- Registration
- Chairman & Board of Directors
- Monthly Fee
- Statute Internal Rules
- Ower’s Assembly
- Financial Plan Repairs
- Enforcement of Decisions

HOMEOWNERS ASSOCIATION
4. Owner’s Participation

Lessons from Britain, Scotland, Australia, France, USA, The Netherlands
Britain
(England, Wales)

Leasehold Tenure System
- England, Wales = unusual
- Long leases as owner occupation = 99-125 years

Strict legal sense:
Not ownership

There is 1 landlord (Freeholder) who holds outright ownership of building & land under it

- In charge of maintenance
- Costs for management & maintenance passed to leaseholders as service charges
- No problems for owners to reach collective agreement
Britain
(England, Wales)

REFORMS:

1. Access to info about charges calculation
2. Consultation about appointment of managing agent
3. Right to challenge unreasonable charges
4. Right to have manager appointed by court if freeholder not complying with his obligations
5. Right to Enfranchise: establishment of flat management company
6. LEASE: Leasehold Advisory Service to provide free info & advice
7. Development of Recognised Management Code to be used by Courts to judge on quality of service provided by managing agents
8. Simplifying procedures for lease extension
9. Introducing “commonhold tenure” as alternative to leasehold system
10. Introducing the “right to manage” for leaseholders
Unlike England & Wales, ownership of apartments is possible under Scotish Law!

1. Common law rules: LAW ON TENEMENT
2. Division of property between apartment owners in a tenement building
3. Reciprocal obligations on repair and maintenance
4. Right of common interest for each apartment owner in parts of the building that they don’t own but which support or shelter their property
5. Conveyancing practice of inserting deeds of conditions into the title deeds of an apartment: division of property & for its management
6. Made common: land, foundations, external walls, dividing walls, entrance passage, stairs, down pipes, roof, gutters, backgreen or backcourt
7. Good deeds: set rules for organisation of repair and maintenance
Scotland

Role of Local Authority: advantage in relation to England & Wales

1. Powers to deal with disrepairs
2. Issues notice requiring works to be carried out when common areas of the block are in serious disrepair
3. Make grants available to owners to cover part of the costs

BUT PROBLEMS TOO:
1. Involvement only when problem becomes very acute
2. Preventive maintenance is not required
3. Granted-led renewal unlikely to be continued given the magnitude of funding
1st generation of legislation: neglected arrangements for on-going management

2nd Generation of Statutes

France:
Co-ownership Act (1938): amended 1965, 70, 85, 94.

Australia (NSW):
1961 Strata Title; replaced in 71; replaced in 96.

USA:
### Decision Making

1. Owners automatically members of managing body
2. Managing body with statutory responsibility for common property
3. Owners can provide by-laws to regulate use & enjoyment
4. Statutes with systems of sanctions to enable owners to enforce decisions

### Rights & Responsibilities

1. Prescriptions to maintenance, insurance and rebuilding
2. Proscriptions of alterations without prior consent of other owners
3. Owners to abide to by-laws of the building
4. Pay share of the costs of managing and maintaining common property

Statutes provide form of registration and regulation of professional managing agents.
TRENDS:

• Trend is to give more saying to apartment owners or leaseholders
• Introduce more responsibilities
• Push residents to be more actively involved in the management of their common property
• Clearly defined boundaries between individual and common property
• Legal provisions to enforce membership and commitment of individual owners to common property management.
5. Legal Provisions governing the maintenance of the Housing Stock: The Netherlands
Social Rented Sector

Social Landlords in charge of maintenance and management.

Private Rented Sector

Private, institutional and Commercial Landlords in charge of Maintenance and Management.

Ownership Sector

Owners Associations – OA in charge of maintenance and management of the multi-family buildings.

Housing Associations & Property Management Companies

Legislated by the **1901 Housing Act** and subsequent legislation enacted thereafter up to date
Current HOUSING Policy

- Government stimulating home ownership
- Housing Associations selling out part of their stock
- Buildings with mixed ownership type: privatised flats/owner occupied next to rented occupation
Multifamily Apartment Building

• Each Apartment Owner is obliged to become member of Owners’ Association-OA

• According to the law, each owner is automatically a member of the OA.

• Only when the apartment is sold and the transaction is sealed by a notary officer, is the individual no longer a member of the OA.
FUNCTION and OBJECTIVE of OA

• **DECISIONS:**
  • maintenance
  • service costs
  • facilities in the building

A *legal entity prescribed by legislation.*

• To safeguard the collective interest of the apartment owners
• Responsible for and has a saying on (the communal parts of) the building and land attached to the building.
• Control and management of building maintenance and use of communal parts.
**DECISION MAKING**

**ASSEMBLY OF OWNERS**

- Minimal of 1 annual plenary meeting.
  - Highest organ of OA.
- All owners are tied to the decisions that OA takes during the meeting.
- Majority of presence (1st meeting)
MAINTENANCE as prescribed by law:

Establishment of an administrator/property manager or board of directors:

1. preparation of budgets,
2. control over finance,
3. call meetings and prepare minutes,
4. settling insurances.
MANAGEMENT AND BOARD OF DIRECTORS
as prescribed by law:

• Appointed by the Owners’ Assembly;
• He/she can be one of the owners or an external person or company like a property management company;
• The administrator / property manager implements the decisions taken during Owners’ Assembly.
• The owners’ assembly can also dismiss the administrator.
• Balance sheet is prepared with all assets and debts of the OA by the Administrator/Property Manager.

• The administrator/property manager prepares and proposes the budget for the subsequent year and submits to the owners’ assembly for approval, every year;

• Budget proposal takes into account each owners’ monthly financial contribution (service costs) and the expected disbursement/expenditures
SERVICE COSTS
Monthly Financial Contribution

1. Compulsory.
2. Financial contribution of each owner.
3. Determined during the owners’ assembly.
4. Value of the owner’s monthly financial contribution is often determined in the notary office registration of each owner (during the splitting act).
5. Depends on size and value of property.
SPLITTING ACT

• Determines the share of each owner in the apartment complex.

• Determines the amount of votes one owner has in the assemblies of the owners’ organisation.

• Indicates the relation between service costs – monthly financial contribution – and the share of each owner – space and value of the flat – in the totality of the apartment building.

In other words:

the bigger the size of the apartment the larger is the vote and the financial contribution of its owner.
What should Homeowners Associations do?
1. RESERVES

Average of 1% of rebuilding value for capital (large scale) maintenance on an annual basis. Depends on age and state of maintenance of the building.

2. MAINTENANCE

Every 3 or 5 year BUILDING INSPECTION.

First step to prepare maintenance plan and determine amounts to be reserved via the owners’ monthly financial contribution. Often done by independent company or expert hired by the OA.
3. QUORUM for DECISIONS

if majority of owners don’t show up at the assembly, OA cannot take a legally bound decision. Second assembly is called up & requirement for majority presence is no longer needed. The decision taken binds all owners.

4. FINANCIAL PLAN AND RESPONSIBILITIES

Multi-year plan for maintenance. Money is reserved via the monthly owners’ financial contribution or private savings of each owner. First method is the most advised and used one.
5. LOAN FROM CAPITAL MARKET CAN BE RISKY:

OA able to get a loan. Interest rate is usually above the common rates used for individual housing loans. Must be repaid quickly (5 years). Individual owner cannot pay back quicker because separated administration is needed. OA are advised to reserve money via the owners’ financial contributions (service costs).

6. SEVERE DAMAGES

In case of acute glass, building, sewerage and heating damages, OA can make use of the First Help of the National Home Owners’ Association.
7. **FINANCIAL PLANNING**

Short-term plan (1 year) and long-term plan (10 years). Both income and expenditures linked. Short-term is for annual budget. Long-term is for maintenance reserve.

8. **FINANCIAL RESPONSIBILITY**

Once per year, administrator presents annual accounting. Owners can compare previous budget with actual expenditures and proposed budget for the subsequent year. When Assembly agrees with the accounting figures, the responsibility is given from the administrator to the OA.
BRIEF CONCLUSION

• Individual Rights & Obligations
• Transparency and Accountability
• Property Valuation is collective interest but benefit is individual
• Legal basis and legitimacy towards third parties
CONCLUSIONS

LESSONS LEARNED THAT ARE USEFUL FOR BULGARIA

END