

# MUD Act 2011 - Brief Summary and Practical Issues

This Summary should be read in conjunction with the Act. For further reference, see also Schedules 1, 2 and 3 of the Act.

- *In cases where the common areas have been transferred prior to the enactment of the Act, only the Sections highlighted in grey are relevant.*
- *In all other cases all Sections of the Act are relevant.*

Sect	Title	Content/wording	Comment
1	Interpretation	As stated in Section 1	<i>None necessary</i>
2	Application	<p>a) Applies to all Muds</p> <p>b) A reference to fair and equitable apportionment of the costs and expenses of the Mud shall mean that account is taken of all relevant matters including the respective level of use of any common areas by the owners of different classes of units</p>	<p><i>a) unless otherwise provided.</i></p> <p><i>b) That sounds fair and reasonable.</i></p> <p><i>Note it doesn't say specifically that account be taken of level of usage of any common <u>utilities</u> (as distinct from common areas) say, e.g., lift, although it probably means to.</i></p> <p><i>This reference to "level of use" could possibly lead to spurious claims, perhaps even as only a means to delay payment of service charges.</i></p>
3	Conditions relating to sale of residential units (where a residential unit HAS NOT previously been sold i.e., not sold prior to 1st Apr11)	<p>a) This Section relates to residential units in newly constructed MUDs and refers to sales where NO residential units have previously been sold</p> <p>b) The <u>relevant common area must be transferred first</u></p> <p>c) The beneficial interest in the part-common areas transferred under this Section is reserved to any mortgagee or the owner of a charge affecting the beneficial interest in the common area</p> <p>d) Amongst a number of other obligations and certificates on the part of the developer and his professional team, this Section provides for a contract in writing between the developer and the OMC in which is set out particulars of the arrangement in place for the release to the developer of monies held by the OMC (pending completion of common areas) <u>where the contract provides for it.</u></p>	<p><i>a) Concerns both the solicitor acting for the developer and the independent solicitor acting for the OMC (<u>appointed and paid by the developer</u>). There would appear to be a lot of work involved for both solicitors in this Section.</i></p> <p><i>b) The common areas must be fit for transfer.</i></p> <p><i>c) It would of course be preferable that the beneficial interest would revert to the OMC automatically on the completion of the development, but that is not legislated for. See also Sections 11(i) and 12(ii).</i></p> <p><i>d) The contract referred to in this section talks about the arrangement for releasing monies held by the OMC to the developer, but doesn't say how much money should be held by the OMC, or how it is computed or under whose control the money is managed, or indeed if there is any obligation at all on the part of the developer to lodge money.</i></p> <p><i>NOTE: the developer is responsible for paying the legal costs of the solicitor representing the OMC in the transfer of the common areas where a residential unit HAS NOT been sold prior to 01 Apr11</i></p>

Sect	Title	Content/wording	Comment
4	Transfer of common areas where a residential unit HAS been sold prior to 01Apr11	In effect, this refers to where one or more, but LESS than 80% of sales have closed <u>PRIOR</u> to 01Apr11. In this case the relevant common area must be transferred to the OMC by 30Sep'11 with the benefit of residential interests reserved.	<p><i>The developer must first instruct his solicitor, and this may be a problem if there is inability to pay fees, or if there is an outstanding account.</i></p> <p><i>The OMC will presumably appoint it's own solicitor in this case and discharge it's own legal fees.</i></p> <p><i>The Act doesn't provide for developer's non-performance - presumably it becomes a civil issue.</i></p> <p><i>Can sales go through after 1st Sept'11 where the common areas have not been transferred? Yes; there would need to be good reason otherwise.</i></p>
5	Transfer of common areas where 80% or more of the residential sales have closed	In this case the entire common areas must be transferred to the OMC before 30Sep11 without the reservation of any beneficial interest, if not already transferred.	<p><i>Same comments as in No 4</i></p> <p><i>The question of who will be the first directors of the OMC and when will the members become directors and take over control of the OMC is not addressed by MUD. The Act doesn't mention it at all.</i></p> <p><i>Presumably the 1963 Act applies or the Memorandum and Articles of Association of the OMC. It seems owners have to wait, same as before.</i></p>
6	OMC to join in transfers to purchasers	As requested by the developer	<p><i>It is not certain if this request should be routed through the OMC's solicitor. OMC directors may not wish to sign anything unless advised in the matter by OMC solicitor, in which case the developer pays both sets of fees involved. Presumably also, the OMC solicitor should retain the counterpart deed of transfer on behalf of the OMC.</i></p>
7	Developer's obligation to complete the development	This obligation remains with the developer and includes duty to comply with:- a) Planning & Development Acts 2000 to 2009 b) Building Control Acts 1990 and 2007	<p><i>While the obligation to complete remains, there is no mention of a time limit. The question of uncompleted developments remains, either for lack of funds, demand or other reasons.</i></p> <p><i>Developers frequently retain the right not to build all the units for which planning has been granted, and sometimes retains the right to ADD to a development (say in cases where he has his eye on adjoining lands).</i></p> <p><i>In such instances, when is a development "substantially completed" within the meaning of the Act?</i></p> <p><i>Does responsibility to complete transfer to parties in possession (eg. banks)?</i></p>
8	Automatic membership of OMC	This now comes with any transfer of a residential unit, the new owner has voting rights and assumes responsibilities of a member, including obligation to	<p><i>Unlike before, this is now automatic</i></p> <p><i>Apart from the obligation to comply with house rules and pay service charges, ALL owners are required to keep the OMC informed of their contact details</i></p>

Sect	Title	Content/wording	Comment
		pay service charges	<i>including their tenants and occupiers of the unit. They must be informed of this.</i>
9	Transfer of common areas – other considerations	Includes confirmation of access/ easement rights and developer obligations consequential of the transfer of relevant parts of the common areas	<i>Includes insurance obligations on the part of the developer. Not stated to be but presumably requires to be confirmed in writing by the developer to the OMC.</i>
10	Transfer of ownership of part of a development to a unit owner	Relates to part of a development which might commonly be held to be an OMC responsibility, but in this particular instance is not. Provision is allowed for transfer to/from the OMC by agreement	<i>Probably refers to a roof, attic, loft, lobby, a bit of a garden, terrace, yard, patio or some such part, where it is considered desirable to change the original agreement as regards legal possession or ownership. Also, lack of clarity in the title deeds could trigger the application of this Section.</i>
11	Determination of certain beneficial interests in common areas on completion of development	Obliges developers, mortgagees and lenders to relinquish their beneficial interests by statutory declaration on completion of a development	<i>Had it been possible, it would have been more practical that mortgages and charges for the benefit of lenders should specifically have excluded the common areas from their charge or should have ranked second to the OMC's rights of ownership. Such mortgages and charges are ineffectual in the case of common areas.</i>
12	Determination of certain beneficial interests in common areas in certain cases	The owners of 60% of the residential units can request the transfer of the beneficial interest in the common areas for the benefit of the OMC	<i>Comment as in No 11</i>
13	Right of OMC to effect essential repairs	This right is subject to affording the developer reasonable opportunity to carry out the necessary work, except in cases of absolute emergency	<i>This right is now a statutory one, which is welcomed. However, affordability may become an issue, where the developer is in NAMA, receivership, or in liquidation. Conflicting hierarchy of claims maybe?</i>
14	Structure of OMCs where <b>NO contract for sale</b> of a residential unit had taken place prior to enactment (i.e.,24Jan'11)	This Section provides for:- a) Voting rights; one vote applies to each residential unit, each vote being of equal value b) The letters OMC must be added to the name of the owners' management company	<i>This Section does NOT apply to existing developments where a unit HAS BEEN sold prior to 24Jan11.</i>
15	Structure of OMCs - existing residential	This Section provides for:- a) Voting rights; one vote applies to each residential	<i>a) One vote per unit is normally the practice anyway. This will be the norm from now on.</i>

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	only developments	unit, each vote being of equal value b) if an owner has more than one vote per unit under the existing scheme, only one vote shall apply unless application for retention is made to the Circuit Court and granted.	<i>b) In order to retain any enhanced voting rights, it must be proven to the Circuit Court that an essential economic primary interest in the development concerned, other than ownership of a residential unit, exists, or that it is necessary in the interests of fairness and justice.</i>
16	Directors' term of office	A term of greater than 3 years is prohibited	<i>Effectively no change to the vast majority of OMCs. On the expiry of 3 years a director must retire, but may stand for re-election.</i>
17	AGM and Annual reports of OMCs	Sets out an additional requirement to furnish each member, at least 10 days before the AGM, with an annual report for the previous year which includes; a) Income & Expense report b) Statement of Assets & Liabilities c) <i>Where the OMC is required to establish and maintain a sinking fund;</i> (i) the amount to credit of the fund (ii) the amount and basis of the annual fund contribution d) <b>In addition, the following;</b> (i) A statement of the amount of the annual service charge for the period covered by the report, and the basis for same (ii) the projected OR agreed annual service charge for the current period (iii) a statement of planned expenditure of a non-recurring nature intended to be carried out in the current period (iv) a statement of the insured value of the development, premium, insurer and principal risks covered (v) a statement of fire safety equipment & service contract (vi) a statement disclosing any director's connected-	<i>a) Interestingly, the Act doesn't say that the Income and Expense statement should be a detailed itemised statement. It can, presumably be abridged, as meets the requirements of the 1963 Companies Act. b) Heretofore, the information furnished to members at the AGM was the audited financial statements, essentially a) and b) only, although it was common practice to include some of the details listed in d). c) It should be noted that it is NOT incumbent on OMCs to establish a sinking fund – (see later section) d) It was normal practice for the annual budget for the current year, certified by the auditor as being adequate to meet the outgoings of the company for the year, to be included with the audited financial statements. It even identified the amount earmarked for the sinking fund. The other requirements listed in this section is good practice. The provision for a statement disclosing any director's interest in contracts entered into by the management company, whether directly or by association with others, was always a requirement anyway, and auditors would have included it. Now the MUD Act requires it too. NOTE (not mentioned in the Act): It was previously common practice to include a statement setting out the service charge applicable to each unit in the development, showing the amounts received during the year and the closing balances at year end. This latter statement can no longer be included because, surprisingly for some, it contravenes the Data Protection Act 1988 and Data Protection (Amendment) Act 2003. Directors of OMCs find it quite frustrating that only they are entitled to know who is in arrears with payment of service charges; the members are not entitled</i>



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		party interests	<p><i>to this information. OMCs have to take legal proceedings, and obtain and register a judgement against a defaulter before the members come to find out.</i></p>
18	Annual Service Charge	<p>a) Cannot be levied unless it has FIRST been approved at a general meeting of members.  b) Requires approval of 60% to amend at the meeting  c) Disapproval requires 75% voting against  d) In which case the previous service charge applies pending adoption of a new charge (presumably at another meeting if one takes place at all!)  e) Sect 18 (5) whereby the directors can strike a charge to operate for a period of 4 months only, applies where no service charge applied in the previous period, and would seem to apply only to “ghost estates”. This is clearly a problematic section, and I doubt if MUD will be of any help at all.  f) Service charges cannot be used to defray developer's or builder's expenses unless approved by 75% of members, and only then if 65% of the development has been transferred to owners unconnected to the developer, and at least 3 years have elapsed since the transfer of the relevant common areas, and any such expenditure defrayed is recoverable from the developer/builder/whoever.  This Section  g) Developers are responsible for the service charge on the unsold units from the date of sale of the first unit.  h) Service charges must be transparent and equitably apportioned.  i) Surpluses and deficits (if any) at year-end may be</p>	<ul style="list-style-type: none"> <li>● <i>Obviously does not apply in the first year.</i></li> <li>● <i>Expense categories are specified, but not in any great detail.</i></li> <li>● <i>Firstly, the Estimate is prepared by the directors.</i></li> <li>● <i>It's based on anticipated expenditure for the coming year.</i></li> <li>● <i>Presumably it can include provision for a Contingency Sum, although the Act doesn't mention this.</i></li> <li>● <i>It's then put to the members in General Meeting. There it's approved unless amended or defeated.</i></li> <li>● <i>This Section of the Act is not be popular with directors; their authority is greatly diminished by what they see as an unnecessary and unwarranted interference in their role as directors, effectively placing them in a straight-jacket.</i></li> <li>● <i>They give generously of their time and expertise in managing their complex, and in assuming the attendant responsibilities of the office to which they are elected by the members, while the same members, having put no time and effort into the process, are entrusted with the final decision! It will inevitably breed dissension where their recommendations are not accepted and the fear is that it will ultimately lead to lack of interest from suitable candidates in becoming a director.</i></li> <li>● <i>This is a shame because it is already difficult enough to entice suitable candidates on to boards.</i></li> <li>● <i>The broader authority to manage vested in directors by the 1963 Companies Act doesn't apply in the case of OMCs, effectively ranking the OMC director as of lesser class. That's the way some of them see it.</i></li> <li>● <i>Submissions on this were made during the drafting of the Bill, to no avail. It's a great pity that the powers that be, with little or no practical experience to call on, can force through radical decisions like this.</i></li> <li>● <i>Already we are seeing examples of this section not working.</i></li> <li>● <i>In practice it is likely that special resolutions will be passed at AGMs authorising directors to strike the annual service charge budget subject</i></li> </ul>

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		<p>carried forward to the following year, but surpluses may also be applied towards sinking fund expenditure.</p>	<p><i>to being within predetermined limits, say inflation, and thus avoid the necessity to convene a second general meeting, which very few if any members will want.</i></p> <p><b>Could such a resolution have effect, legally? ... the law is the law and this might be seen as a way to circumvent it?</b></p>
19	Sinking Fund	<p><b>a)</b> This Section places an obligation on OMCs to establish a sinking fund, referred to as a “building investment fund” to be expended on:- Refurbishment Improvements Non-recurring maintenance (ie, not occurring every year) Associated professional fees</p> <p><b>b)</b> The fund expenditure structure must be certified as appropriate by the directors, and approved by the members</p> <p>The annual contribution shall be €200 <u>or such other amount as may be agreed by the members</u> in general meeting.</p> <p>Developer must contribute to the fund from date of first sale of a residential unit in the relevant section of the development</p> <p>Fund to be established either <b>a)</b> 3 years from date of first sale <b>b)</b> 18 months from 1<sup>st</sup> April'11</p> <p>Fund to be held in a separate a/c and cannot be spent on anything other than what it is</p>	<p><i>This section provides for what is already loosely intended in most Leases. Elements to be considered:-</i></p> <ul style="list-style-type: none"> <li>● <i>the size the fund</i></li> <li>● <i>whether to provide for every contingency or</i></li> <li>● <i>whether NOT to provide for the longer term contingencies</i></li> <li>● <i>whether to provide for a Sinking Fund at all</i></li> <li>● <i>whether special levies are more appropriate in some cases</i></li> <li>● <i>whether a Contingency Fund for day to day issues is also needed</i></li> </ul> <p><i>Undoubtedly, a Sinking Fund is most desirable, and in many cases even essential. However, there is nothing in the Act which says that the recommendations of the “suitably qualified person” must be accepted by the members. They may not be!</i></p> <ul style="list-style-type: none"> <li>● <i>A full Schedule of Dilapidations needs to be drawn up by OMCs. (Arguments about developer responsibility may arise in some cases).</i></li> <li>● <i>It will be put to the membership at a general meeting.</i></li> <li>● <i>Presumably the sum of €200 per unit mentioned in the Act is not necessarily an “equal” payment but can be apportioned in accordance with the lease.</i></li> <li>● <i>The Act allows the members to decide a different amount; it's conceivable they could decide a NIL amount.</i></li> <li>● <i>If members have any powers at all, and the Act is about giving the members power, they can decide as they think fit, whatever experts say.</i></li> <li>● <i>Is it unreasonable to think that when cash flow in the day-to-day a/c requires, this 'parked' sinking fund will not be tapped into to meet essential day to day expenses... e.g., to keep the lights on?? To pay the insurance??</i></li> </ul>

Sect	Title	Content/wording	Comment
		<p>earmarked for.</p> <p>A dispute resolution mechanism is provided for in this section.</p>	<ul style="list-style-type: none"> <li>• <i>It is worth mentioning that in virtually no block, and certainly in any recent blocks built, are the service charges paid up to date. Cash-flow is a problem in such blocks.</i></li> <li>• <i>The management of Sinking Funds and the precise accounting for same (and the current status of owners' a/cs, is likely to be hugely problematic.</i></li> </ul>
20	Sinking Fund -all houses only	If it is a multi-unit development to which Sect 2(2) applies, a sinking fund does not need to be established, but if it is, Sect 19 applies.	<i>This would appear to apply to a development which is comprised of houses only. A sinking fund is optional.</i>
21	OMC annual charges	Annual service charges and the sinking fund contribution may be collected by way of single request, and if so, may collectively be described as "owners' management company annual charges"	<i>They may also be billed and collected separately, although accounting for the different charges will be problematic if partial payment is received in one single lump sum (eg., what account to credit and how to apportion??)</i>
22	Recovery of charge	Service charges and sinking fund contributions are recoverable as a simple contract debt in a court of competent jurisdiction	<ul style="list-style-type: none"> <li>• <i>This may make the production of the counterpart lease in court no longer necessary, if the unit owner acknowledges their membership of the OMC and ownership of the unit. Responsibility for payment of the charge follows.</i></li> <li>• <i>In many cases at present the developer is unable to pay the service charge on unsold units and as long as the units remain in the ownership of the developer, the OMC must join a long line of creditors or hope for bank or receiver to oblige!</i></li> </ul>
23	House Rules	<p><b>a)</b> House rules consistent with the provisions of the relevant leases and title documents may be made, and if so made, are binding on unit owners and tenants, their servants, agents and licensees.</p> <p><b>b)</b> House rules must be circulated beforehand and approved by the owners in general meeting</p> <p><b>c)</b> Copies must be circulated to each owner and a copy distributed to each unit.</p> <p><b>d)</b> A copy must be appended to every letting and</p>	<p><i>a) In addition to owners being made aware of their statutory duty to abide by the house rules, tenants must also be informed likewise.</i></p> <p><i>b) It is probable that the approved house rules, to be effective, should be posted on a notice board or in a fitted frame in a prominent place(s) within the development.</i></p> <p><i>c) It is probable that house rules should be laminated.</i></p> <p><i>d) Letting agents at large need to be made aware of their obligation to see to it. that every letting agreement they arrange has a copy of the relevant house rules</i></p>

Sect	Title	Content/wording	Comment
		licence agreement.  e) The OMC is entitled to recover the cost of remedying any breach as a simple contract debt	<i>appended.</i>  <i>e) Fines imposed by the OMC is not appropriate here. However, recovery of all reasonable costs involved is permitted.</i>
24	Dispute resolution	There are nine sub-sections and thirteen further mini-sections within this Section 24, all dealing with disputes should they occur, including mediation and resolution. Briefly they encompass such matters as:- <ul style="list-style-type: none"> <li>● quiet enjoyment of common areas</li> <li>● amending legal documentation</li> <li>● issues relating to one structure only</li> <li>● MUDs with more than one OMC</li> <li>● establishing additional OMCs</li> <li>● apportioning s/charges and funds</li> <li>● amending covenants with developer</li> <li>● dealing with debt burden</li> <li>● future OMC management</li> <li>● transfer control to OMC problems</li> <li>● OMC non-compliance with Act</li> <li>● proposal to alter physical character</li> <li>● directing developer to comply</li> <li>● directing unit owners to co-operate</li> <li>● altering voting rights of members</li> </ul>	<i>This Section is to be welcomed.</i> <i>Considering the potential costs involved in going to Court, mediation will probably be the preferred and more efficient way to resolve disputes where that is possible.</i>  <i>However, some disputes, even when settled amicably, will inevitably require a Court Order:-</i> <ul style="list-style-type: none"> <li>● <i>where the rights of others are likely to be affected by any decision</i></li> <li>● <i>where legal documents have to be amended</i></li> <li>● <i>amending covenants with developer</i></li> <li>● <i>altering voting rights</i></li> <li>● <i>repeated non-compliance with the Act, by any party</i></li> </ul> <i>It will not become a day-to-day issue, but some some newly constructed and unfinished developments are prime candidates for this Section and OMCs and their managing agents could have their hands full.</i>
25	Dispute/Persons	Concerning eligible parties in disputes	<i>Speaks for itself</i>
26	Jurisdiction	Circuit Court local to the development	<i>Speaks for itself</i>
27	Mediation Conference	The Circuit Court may direct the disputing parties to mediation	<i>The Court will direct who should pay the costs incurred. This is something which the OMC may have to budget for, if aware of an impending dispute. The notes and records of the Chairperson in mediation are confidential and shall not be used in any civil or criminal proceedings.</i>

<b>Sect</b>	<b>Title</b>	<b>Content/wording</b>	<b>Comment</b>
28	Report of Mediator	The mediator prepares a report and submits copy to both parties at same time as to the court, which proceeds to make an order as to costs where a settlement was not reached.	<i>The Court will decide the application where mediation has failed. There has been only limited experience of mediation to date. Hopefully it will help to resolve disputes, but a lot will depend on the expertise of the mediator.</i>
29	Existing jurisdictions	The Act does not derogate from any right or power vested in any person or court before or after the passing of MUD Act.	<i>The rights and powers conferred by the MUD Act are in addition to any such rights or powers vested in persons by the Companies Act 1963 and in legal contracts..</i>
30	Restoration of companies to register	This Section applies to OMCs in which common areas had been vested prior to being struck off. Such companies can be restored to the register if within 6 years of having been struck off they apply on the prescribed form and submit all outstanding annual returns.	<i>NB. The Act does not deal with the act of restoring a company to the register, where the common areas have NOT been conveyed prior to it being struck off.</i>
31	Transfer of warranties	Guarantees and warranties for the benefit of the developer/builder transfer automatically to OMC and details are included in Schedule 3 documentation	<ul style="list-style-type: none"> <li>● <i>No notification to guarantor is necessary.</i></li> <li>● <i>Related documentation to be handed over to OMC.</i></li> <li>● <i>Refer to Schedules 1, 2 and 3 of the Act.</i></li> </ul>
32	Restrictions on contracts	OMC contracts cannot be expressed to run for a period in excess of 3 years NOR cannot provide for penalty or damages if terminated 3 years or after.	<i>NB does not apply to guarantees or warranties which may exist.</i>
33	Minister's power to make regulations	The Minister (of Justice & Law Reform) shall consult with Minister for Enterprise and Minister for Environment before regulating under <i>sections 18,19 or 23.</i>	<i>Refers to making regulations regarding:-</i> <ul style="list-style-type: none"> <li>● <i>service charges</i></li> <li>● <i>sinking fund</i></li> <li>● <i>house rules</i></li> </ul>
34	Short title and commencement	Title: Multi-Unit Developments Act 2011	<i>Commencement date is 01 April 2011</i>

**NOTE :** *The standard Requisition 37 previously responded to in re-sales will alter to reflect the changes introduced by MUD. The overriding question is likely to be "Is the OMC fully in compliance with the provisions of the Multi-Unit Developments Act 2011?"*