

The Owners' Management Company

By Aisling Keenan - A.K. Property Services

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Service Charge Collection and Arrears Management in OMCs

Presentation to The Apartment Owners Network

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THE SERVICE CHARGE DEBT

It is a different type of debt

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THE SERVICE CHARGE DEBT

How to be pursued?

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TYPES OF SERVICE CHARGE PAYERS

Pre-payers

Prompt payers

Slow payers

Delinquent payers

Non-payers

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A written Management Company Policy for the collection of service charges

Check lease provisions
against
MUD Act

Statute of Limitations not applicable to a contract under
seal - must be compliant with lease provisions

Sample Management Company Policy for the Collection of Service Charges

Policy discussed and approved at Annual General Meeting

held on Tuesday, 21st November 2023 at The Lake Hotel, Dublin.

Initial “Request for Payment” sent out to all owners after Annual General Meeting where the budget and service charge amount are agreed.

Payment options offered:

Standing Order payments – Standing Order payments to be made for 10 months or less and must ensure that FULL amount is paid in advance of the date of the next AGM. Apt/Unit/House number and/or owner’s name must reference the Standing Order payment.

Cheque payment – cheques to be posted to the Managing Agents Office and made payable to ***“Sample Owners’ Management CLG”***.

Online transfer – Bank details will be available on “Request for Payment” sent to Owners. Apt/Unit/House number and/or owner’s name must reference the payment.

Cash may be paid directly into the company bank account using the account details as set out on the “Request for Payment”. Cash may also be paid at the office of the Managing Agent. It is not recommend to send cash payments through the post.

Sample Management Company Policy for the Collection of Service Charges - continued

“Request for Payment-Reminder” will be sent out to all property owners 1 month after the initial “Request for Payment” which will state that if FULL payment is not received or a payment plan is not in place within one month a levy of €200.00 will be applied to the account.

After the month has passed a letter will be sent to advise that the aforementioned levy has been applied and Owners will also be notified that their account will be passed to company Solicitors for collection where outstanding service charges will be pursued legally and all legal costs associated with the collection of this debt will be borne by the property Owner and applied to their account unless a payment plan is in place to pay off FULL amount or FULL payment is received within 10 days from the date of the said letter.

After 10 days, if there has been no notification that a payment plan is in place or FULL payment has not been received, company Solicitors are appointed to the debt whereby the Managing Agent will instruct them to issue legal proceedings to recover the debt.

PROPOSED BY:

SECONDED BY:

DATE:

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Outstanding Service Charges and Receivers

Blood from a stone - the OMC carries the debt

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Access to Circuit Court decisions

Creative thinking - restrictions

Reporting in the Annual Report

Company Law, GDPR and The Data Protection Commission

OMCs & Financial Management

As noted, most OMCs are bodies corporate, and are most often found to be incorporated as CLGs. The governing document of a company is its constitution. Among the matters set out in a company constitution are the company's objects and powers.

One such power afforded to the company may be the power to process personal data concerning payment or non-payment by members of OMC annual service charges, including the power to disclose such information to some or all of the members of the company, as and when necessary. However, any such disclosure must be justified as both necessary and proportionate to achieve a specific, explicit and legitimate purpose, in accordance with data protection law. It could also include a power to disclose to other members information in relation to breaches by a member/unit owner and/or any tenant, of lease covenants, house rules, regulations, restrictions, byelaws, or other similar provisions relating to the estate. The processing of personal data of members of an OMC in accordance with the constitution should be transparent, and members should be adequately informed of any processing that may take place.

Company Law, GDPR and The Data Protection Commission

For example, an OMC may be required to provide certain financial information to its members with regard to the management of annual service charges. In general, this should be achieved without disclosing the personal data of members, unless necessary and reasonable. Respect for confidentiality should be maintained in circumstances where directors of OMCs have access to information regarding their neighbours' good standing as to payment of annual service charges.

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Up to €15,000.00 a claim notice in the District Court

Between €15,000.00 and €75,000.00 a civil bill in the Circuit Court

More than €75,000.00 - High Court

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Voluntary Deed of Charge

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Thank you

Questions and Answers