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Code Of Practice for Developers

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While it is incumbent upon the solicitor representing the purchaser in a property transaction to apprise their client of key aspects of the conveyancing transaction and associated documentation, developers by providing important information to prospective purchasers at the earliest possible stage can help to reinforce consumer awareness of key aspects of multi-unit development living.


As part of the work of the Multi-Unit Development Stakeholder Forum, the National Consumer Agency and the Irish Home Builders Association have developed

a Code of Practice to be followed by developers who are members of the Irish Home Builders Association (IHBA) in their dealings in relation to the development, interim management and sale of multi-unit development properties.

The scope of the Code of Practice focuses in particular on the development, interim management and sale of multi-unit development properties. It sets out a series of voluntary actions that aim to enhance the good operation of this sector. By committing to the Code, IHBA members can help ensure that developers and consumers share an understanding of their respective roles and responsibilities in relation to multi-unit developments.

The Code shall be applicable to all new multi-unit developments by IHBA members where Management Company arrangements are put in place after 1st September 2008. Reflecting the best practice aspect of this Code, IHBA members may apply the same principles in respect of the operation of Management Companies established prior to this date. The Code of Practice is also accessible via the website of the Construction Industry Federation/Irish Homebuilders Association as Code of Practice (COP 1/08).

While every effort has been made to ensure that the information provided is accurate,



the National Consumer Agency assumes no responsibility or liability arising from any errors or omissions. In particular, to ensure that the terms and conditions of the contract to purchase a property adequately safeguard their interests, consumers should always consider seeking independent legal advice and satisfy themselves that they understand the terms and conditions of contract before entering into a contract to purchase a property.

It is understood that arrangements for the regulation of property service providers will be formalised under the auspices of the National Property Services Regulatory Authority (NPSRA). The Bill, providing for the statutory establishment of this Authority is expected to be published by the Government in 2008. The content of this Guide is subject to any more specific requirements that may be introduced or revised by the NPSRA or other relevant statutory bodies.

Irish Home Builders Association

Code of Practice for Management Companies

in respect of Multi-unit Developments

with effect from September 1st 2008



Preamble

This document sets out a Code of Practice (COP 1/08)¹ to be followed by Developers who are members of the Irish Home Builders Association (IHBA) in their dealings in relation to the development, interim management and sale of Multi-Unit Development properties. Its scope relates, in particular, to responsibilities around the ownership, management and maintenance of common areas and the provision of common services within Multi-Unit Developments.

The Code shall be applicable to all new Multi-Unit Developments by IHBA members where Management Company arrangements are put in place after 1st September 2008. Reflecting the best practice aspect of this Code, IHBA members may apply the same principles in respect of the operation of Management Companies established prior to this date. The Code sets out a series of principles designed to provide a framework for the maintenance and management of common areas and for the provision of common services in Multi-Unit Developments. It presents what is considered to be current best practice in the effective management and administration of Multi-Unit Developments. The Code addresses each of the following areas:

- The Management Company
- The Managing Agent
- Service Charges
- Sinking Fund
- Completion & Transfer Issues
- Snagging
- Dispute Resolution & Redress
- Purchaser Information
- Complaints

The Code of Practice sets out a general framework of minimum requirements that apply to members of the IHBA and is subject to any more statutory requirements that may be introduced in any relevant legislation issued or revised by Government Departments from time to time.

1. The Management Company

The Management Company of a Multi-Unit Development² will be established in the first instance by the Developer³ as an essential vehicle via

² Multi-Unit Development is used to describe a building or a group of buildings including multiple self contained residential properties that share certain physical areas, such as car parks, entrance halls and gardens; and certain services, such as security, plumbing and waste disposal.

³ For the purpose of this Code of Practice, the term "Developers" shall be taken to include Developers themselves ("the developer"), their agents, nominees or further third parties appointed by "the developer" to coordinate, facilitate or

¹ Hereafter referred to as "the Code"

which to facilitate sale of the Units.

The Management Company is a central element in the operation, management and maintenance of a Multi-Unit Development. The Management Company is responsible for owning, managing and maintaining the common property and common assets of the Multi-Unit Development, for the benefit, and on the behalf, of the Unit Owners.

It is essential that an appropriate legal structure be adopted in establishing the Management Company. This structure should provide for the effective operation and funding of the Management Company whilst under the control of the Developer, in the first phase of existence of the Multi-Unit Development, and subsequently, once control passes to the Unit Owners.

The standards of information sharing set out hereafter shall apply, irrespective of the legal structure selected for the Management Company.

To facilitate the smooth operation of the Multi-Unit Development, the

manage the sales administration process of Units in a Multi-Unit Development.

Developer *shall*:

1.1 Provide for the establishment of a Management Company duly registered with the Companies Registration Office, in a timely fashion and in compliance with any such directions of the relevant planning permission.

1.2 Following establishment of the Management Company, instruct the Directors to arrange for the preparation of a budget, by a suitably qualified professional, documenting the required service charge categories, specifying recommended sinking fund contribution levels and setting out the apportionment method under which each category of Unit Owner shall be required to pay their annual service charge/sinking fund contribution. The service charge determined shall be appropriate (based on best information available at the time) and the method of apportionment shall be in compliance with good estate management, particularly with regard to the principle of relativity of service charge contributions

1.3 In the standard marketing materials made available in the sales process,

inform prospective purchasers of the requirement for Unit Owners in a Multi-Unit Development to become Members of the Management Company on completion of the sale of their Unit. Information shall also be provided to set out the principal entitlements and obligations associated with such membership.

1.4 Make available to purchasers in any Requisitions on Title, or to an existing member of the Management Company, a copy of the Memorandum and Articles of Association of the Management Company; such information to be furnished within one month of the Management Company being established. As part of requisitions on title, Directors of the Management Company shall furnish information on the Management Company's CRO registration number, if available, to purchasers of property within the Development.

1.5 Provide that the Management Company keep appropriate records of service provision contracts⁴, to facilitate

smooth transition of information on hand-over of control of the Management Company to the Unit Owners.

1.6 While acting as or having control of the appointment of the Directors of the Management Company, have full Director responsibility for filing the required company returns to the Companies Registration Office. The Books of Account for the Management Company should be maintained as separate accounts and managed in accordance with good accounting standards. During this period, Management Company members shall not be liable for any costs arising from returns not made to the satisfaction of the Companies Registration Office.

1.7 Ensure that the voting structure of the Management Company is not weighted in such a way that enables the Developer to retain a controlling majority after transfer of control of the Company to the Unit Owners. With the exception of mixed-use developments, the provisions and arrangements relating to voting and decision taking by the Unit Owner

⁴This should include records in relation to the provision of estate services e.g. supplier and installation specifications,

warranties and guaranties, commissioning certs, service specifications for mechanical and electrical plant

controlled Management Company shall be such that each Owner of a Unit in the Development shall have one vote per Unit owned.

1.8 Facilitate the provision of membership certificates to Unit Owners on completion of their purchase transactions.

1.9 Ensure that the Management Company compiles a register of Unit Owners' contact details for the purpose of the effective administration of the Management Company. These details shall be made available to the Managing Agent appointed to manage the Development.

1.10 In compliance with planning permission requirements, indicate and make available for use by the appointed sales agent, details of the services and public areas within the Development it is intended shall be taken in charge by the Local Authority⁵ and those it is intended shall remain under the sole control of the Management Company.

1.11 Document and make available on request to purchasers, the circumstances and

⁵ In accordance with guidance set out by the Department of the Environment, Heritage and Local Government

indicative timeframe under which it is envisaged that control of the Management Company will be transferred to the Unit Owners and conveyance of the common areas to the Management Company will occur. For large-scale Developments where phased completion is envisaged, set out the intended schedule of transfer of control of each phase to the Unit Owners, both in terms of control of the Management Company and of transfer of ownership of the common areas.

1.12 On establishment of the Management Company or as soon as is reasonably practicable thereafter, provide the Management Company/duly elected Members Committee⁶ and Managing Agent⁷ with:

- **The title documents and counterpart leases**
- **Agreed Snag list and Practical Completion Certification**
- **As built drawings**
- **A register of all Capital Assets**
- **Warranties and other Guarantees, including test records for drainage, water and heating pipe work**

⁶ In the event that Directorial control of the Management Company has not yet passed to the Unit Owners.

⁷ All references in this Code of Conduct to the role and functions of Managing Agents will naturally be subject to regulatory measures as introduced by the NPSRA.

■ Certifications for Fire Safety, Health and Safety, Planning and Building Regulations

1.13 In the period prior to the transfer of control of the Management Company to Unit Owners, and in addition to the Management Company fulfilling its requirements under the Companies Acts, provide at least half-yearly updates regarding the activities and financial status of the Management Company through the Managing Agent and make these updates available on request to the duly elected Members Committee.

2. Managing Agent

The Managing Agent is a business entity contracted by the Management Company to provide and procure, as relevant, services in respect of the day-to-day management, administration and maintenance of the Development. The Managing Agent shall carry out such tasks as outlined in their contract, in return for a fee, the terms of which shall be agreed in advance and set out in a Contract between the Management Company and the Managing Agent. In establishing such initial contracts for new Developments with Managing Agents, Developers, while acting as or being responsible for the appointment of, Directors of the Management Company, *shall:*

2.1 Appoint a Managing Agent for such interim periods as may be appropriate pending formal transfer of control of the Management Company to the Unit Owners.

2.2 Expressly refrain from committing the Management Company to long-term agreements with any Managing Agent, pending the transfer of control of the Management Company to the Unit Owners.

2.3 Arrange for notification to issue to purchasers of the appointment of a Managing Agent, within one month of the Agent being appointed.

2.4 Ensure that the Managing Agent informs purchasers of the specific duties to be provided under their contract, how they may be contacted and how requests/complaints from Unit Owners are to be handled.

2.5 As part of the contract with the Managing Agent, require that the Agent meet at least quarterly with the members of the Management Company to ensure a regular channel of communication. Where a Members Committee has been called into existence pending transfer of control of the Management Company to Unit Owners, such meetings may be

arranged instead with duly elected representatives of that Committee.

2.6 Require that the Managing Agent, at least three months prior to determination of the budget, procure tenders in respect of the various service contracts from qualified service providers. Such tenders must be brought to the attention of the Directors/Members Committee of the Management Company for consideration and acceptance so as to secure value for money in contract allocation and determination of the budget.

2.7 Require that the Managing Agent refrain from entering into long-term contracts with suppliers of any service to the Management Company without the prior authorisation from Directors of the Company.

3 Service Charges

Service Charges are fees applied to Unit Owners in a Multi-Unit Development in respect of ongoing costs involved in the management, maintenance and repair of common areas and in the provision of common services, including cleaning and waste management. Payment of such fees by Unit Owners is a condition of their lease. Appropriate application of these fees for their due purpose, on a value for money basis,

is a critical element in protecting the value of the Development and the quality of life of residents, over time. The setting, collection and application of Service Charges is the legal responsibility of the Management Company, although important parts of these activities are typically outsourced to the Managing Agent under the terms of their contract. On formation of the Management Company, Developers, either as Directors of the Management Company or having responsibility for the appointment of such Directors *shall*:

3.1 Cause to be calculated a budget making provision for an annual service charge revenue appropriate and adequate to finance the running expenses of common area maintenance, common service provision and Management Company administration costs.

3.2 On issue of contracts to purchase, confirm the service charge to be applied for the Development in the first year and estimate charges for years 2 & 3, based on normal wear and tear, available information and average inflation costs.

3.3 Provide purchasers with a clear statement outlining the principal services to be provided and paid for through the aforementioned year 1 service charge. Estimates for years 2 and 3 should be calculated on a similar basis

to the year 1 estimate, allowing for additional costs/services where known and for normal wear and tear, depreciation and average inflation costs. Additional necessary services or costs likely to be incurred in future years and/or those not factored into the year 1 but likely to fall due shortly thereafter (e.g. at the end of warranty periods) should be highlighted where known.

3.4 Expressly forebear from the application of service charges in the remedy of snagging or completion related issues in a Development

3.5 Lodge, or cause to be lodged; all monies received in relation to service charges and sinking fund contributions in separate bank accounts under the name of the Management Company.

3.6 Make good shortfalls in attributable service charge contributions⁸ arising from unsold Units in a Development until such time as these units are sold.

⁸ For the purposes of this Code, Developers liability in respect of service charges accruing to unsold units shall commence from time of issue of practical completion certificate or when the Development is insured, whichever is earlier. Services such as refuse collection on unoccupied units will be deducted from the service charge payment. Developers may be entitled to a refund on services they have paid in full for the block such as ESB and Insurance.

4. Sinking Fund

The sinking fund is an essential provision for the funding of medium to long-term capital expenditure in respect of the maintenance, refurbishment and upgrading of the Development and for the financing of non-recurring or unexpected additional expenses incurred in relation to common areas.

In general, all Multi-Unit Developments should have a sinking fund⁹, and information concerning the value of this fund, the information regarding the basis for the calculation of contributions required and the period over which it is intended to serve the needs of the Development, should be freely available to members of the Management Company.

In order to establish a sound basis for the accrual of an adequate sinking fund, Developers as Directors of the Management Company, upon formation of a Management Company, *shall*:

4.1 Arrange for the preparation of a budget, by a suitably qualified professional, specifying recommended sinking fund contribution.

⁹ Exceptional cases where sinking fund may not be appropriate may arise. In such circumstances, Developers should make this clear in standard marketing materials.

4.2 Ensure that the sinking fund requirement is based on the existing condition of the Development, its potential infrastructure liabilities and the assumption that a routine maintenance programme is adhered to.

4.3 When responding to requisitions on title for the sale of a Multi-Unit Development property, inform prospective purchasers of the purpose of the sinking fund and the period over which it is intended the sinking fund will cover the needs of the Development.

4.4 Ensure that sinking fund monies are lodged in a bank account in the Management Company's name and that this account is separate to the Management Company service charges account. Payments or transfers from the Sinking Fund account shall require the formal approval of Management Company Directors.

5. Completion & Transfer Issues

Transfer of Control of the Management Company to Unit Owners (hereafter referred to as "Transfer") and Conveyance of ownership of the Common Areas to the Unit Owner Controlled Management Company (hereafter referred to as "Conveyance") in Multi-Unit Development are frequently contingent on the

completion of the Development and/or the sale of the final Unit. In some instances, the absence of a uniform definition of "Completion" makes it difficult for Unit Owners and Developers to reach agreement as to the appropriate trigger points for Transfer/Conveyance, as relevant. This Code provides that Developers will not attempt to deem "Complete" any Development until the following have been certified by a professional: e.g. an architect/engineer.

- **The terms of the relevant planning permission have been satisfied**
- **All relevant building regulations and other relevant statutory requirements e.g. fire, health and safety as set out by the Department of Environment, Heritage and Local Government have been complied with, and:**
- **All issues on the snag list pertaining to the common areas/services have been addressed by the developer.**

To facilitate transparency in this aspect of the process, Developers *shall*:

5.1 Advise purchasers of the intended trigger point/s for Transfer of Control of the Management Company to Unit Owners and for Conveyance of the Common Areas. Where a large-scale Development is planned for phased

completion, any schedule for phased Transfer and Conveyance should be clearly set out in the contract for sale.

5.2 Where any delay in Completion and/or Transfer and Conveyance to a Unit Owner controlled Management Company is anticipated, advise Unit Owners of this at the earliest opportunity after this anticipated delay becomes apparent.

5.3 Advise the Unit Owner controlled Management Company with suitable advance notice, of their intention to convey ownership of the Common Areas and to convey title in a timely manner.

5.4 To facilitate a smooth Transfer of control of the Management Company to the Unit Owners, the Developer Controlled Management Company shall arrange for Directors nominated by the Developer to resign from the Board of the Management Company. Unit Owners must be advised by the Developer Controlled Management Company of this step in advance (with at least 8 weeks notice), in order to allow sufficient time to identify appropriate Directors drawn from amongst their rank. Where a Developer nominated Director wishes to remain in place on the Board of Directors of the Management Company post Transfer to the Unit Owners any

such arrangement should be agreed by vote at the meeting of the Company.

5.5 In the case of non-gated¹⁰ residential Developments containing road(s), water mains, etc., the Planning and Development Act 2000 and policy guidance issued by the Department of the Environment, Heritage and Local Government in February 2008, provide for the taking in charge of the core facilities of public roads and footpaths, public lighting, public water supply, foul and storm water drainage, public open space and unallocated surface parking areas, etc. by the Planning Authority. Where the Development is properly completed in compliance with the planning permission, the Planning and Development Act 2000 and above policy guidance provides for the prompt taking in charge by the Planning authority.

6. Snagging

For the purpose of this document, Snagging shall refer to the process of ensuring the satisfactory completion of the Development, through the

¹⁰ Non-gated residential Developments refer to where public access is unrestricted

identification and resolution of defects or outstanding works relating to **common areas and services** (encompassing both internal and external, structural and finishing issues) may be identified by a suitably qualified professional. Snagging issues in respect of individual units shall be resolved between prospective purchasers and Developers on a bilateral basis, and fall outside the scope of this Code.

As regards satisfactory completion of common areas, Developers *shall*:

6.1 Complete the Common Areas to the standards set out in the planning permission.

6.2 Comply with all relevant Building regulations and other relevant statutory requirements e.g. fire, health and safety such compliance to be certified by a suitably qualified professional.

6.3 Prior to the vesting of control of the Management Company and Conveyance of common areas to the Management Company, liaise through the Managing Agent with the Unit Owners or duly elected Members Committee, who may appoint a suitably qualified, professional to procure a full and final snag list on

their behalf. The Developer shall liaise with the Unit Owners/Members Committee through the Managing Agent in addressing and resolving snagging issues in respect of the Common Areas.

6.4 Call on, or cause to call on, the Local Authority to "Take in Charge" the Development, as outlined in Section 5.5, once in the view of the Developer, it has reached the standard of completion set out in the planning permission, including as regards the finish of the common areas.

7. Dispute Resolution & Redress

In some instances, straightforward disputes between Unit Owners and Developers cannot be mutually resolved. Court proceedings can be lengthy and costly for all parties. Alternative mechanisms of resolving such circumstances may be appropriate.

In respect of snagging & completion issues Developers *shall*:

7.1 Set out in responses in Requisitions on Title the dispute resolution mechanism they intend to follow for Development level snagging issues.

8. Purchaser Information

Notwithstanding any items to be supplied in accordance with the provisions of sections 1 to 7 foregoing, Developers shall ensure that the following information is made available upon request to purchasers in Multi-Unit Developments:

8.1 A statement confirming the name, if known, of the Management Company established for the Development.

8.2 A statement confirming the level of Service Charge for the first year of the Development's existence, with best estimate forecasts of the service charge amount for years 2 and 3.

8.3 A statement confirming the establishment of a Sinking Fund, where relevant.

8.4 A statement specifying the trigger point or points for Transfer of Control of the Management Company to Unit Owners and for Conveyance of Ownership of the Common Areas to the Management Company.

8.5 Details of the services and public areas within the Development which may be subject to application to the

local authority for taking in charge, and those which may remain under the sole control of the Management Company.

8.6 A statement confirming the name, if known, of the appointed Managing Agent.

8.7 Where Purchasers can source the National Consumer Agency Guide '*Property Management Companies and You*'.


9. Complaints

The complaints procedure to be applied under COP 1/08 shall be as follows:

9.1 Complaints must be made in writing to the IHBA;

9.2 If a complaint in writing is received by the IHBA from a Purchaser regarding a Member and concerning a breach of this COP 1/08 or if it appears to the IHBA that a Member has breached the code, the IHBA shall in the first instance write to the Member in question setting out the nature of the complaint or alleged breach, inviting the Member to provide a written response;

9.3 Any complaint received in relation to COP 1/08, any breach or apparent



breach of COP 1/08 or the failure of a Member to respond to a request for information made under sub-paragraph (ii) above shall be dealt with under the IHBA Constitution and Rules (adopted 1st March 2005) and Article M of the CIF Constitution and Rules; and

9.4 In the event that a Member is found to be guilty of misconduct in relation to this code COP 1/08 then, in addition to any other remedies available to the IHBA or the CIF, the IHBA may expel the Member from the IHBA and may publish notice of such expulsion or other sanction in the national and / or local press.

This Code of Practice does not form part of any contract between the Member and the Purchaser and no agreement shall be deemed to exist between the parties.