

THE GOVERNANCE OF APARTMENT OWNERS' MANAGEMENT COMPANIES (AOMCs) - NEW DRAFT ODCE GUIDANCE

The ODCE recently published a Consultation Paper and Draft Guidance concerning the Governance of AOMCs which aims to be a comprehensive 'self-help' guide for AOMC directors and members. Comments are invited by 30 March 2007 on the utility of this Guidance. The Paper and Guidance are available on the ODCE's website at www.odce.ie. Alternatively, you can request copies from info@odce.ie or by phone to Maria Leavy at 01-8585833.

The Draft Guidance has been prepared to help maintain the value of apartment developments and the quality of living of their 500,000 residents in Ireland. In particular, the ODCE wishes to encourage member participation in governing AOMCs by explaining clearly the management arrangements which exist and the helpful contribution of Company Law.

The Guidance begins with the question of *What are AOMCs and Why Do We Have Them?* Here, the focus is on the high degree of inter-dependency between all the apartments and owners in a development – much more than exists in more traditional housing settings. That inter-dependency calls for ongoing management, such as arranging block insurance policies and organising maintenance and improvement.

The Guidance continues by outlining *the critical distinction between AOMCs and Property Managing Agents*. In the ODCE's experience, people often fail to fully appreciate that difference and mistakenly think that their Managing Agent is their AOMC. The ODCE stresses that the relationship between an AOMC and its Managing Agent is primarily one of contract.

Next, the Guidance turns to identifying *the key phases in the life-cycle of an AOMC*, focussing particularly on the differences which exist before and after the property developer "hands over" the apartment development to its AOMC. It then outlines *the law which underpins the existence and internal governance of an AOMC* showing that while some of it is *public law* (such as the Companies Acts), the operation of AOMCs is also influenced significantly by the private

property legal arrangements which are established when apartments are first placed on the market.

The separate roles of members and directors are covered, including an outline of what meetings they need to hold and what decision-making structures they should observe. Also, a chapter is included dealing with *the role of an AOMC's Auditor*.

The Guidance outlines *what records should be kept by AOMCs* – both as regards the company's finances and its operations and decisions. Also, the controls which should exist in relation to *an AOMC's bank account* are discussed, together with what information over and above the statutory minimum could usefully be included in *an AOMC's Financial Statements and Directors' Report*.

The documents to be filed with the CRO are itemised, followed by a discussion of *Service Charges* and how they are usually set. The *AOMC's relationships with its Managing Agent and Solicitor* are also examined. Next, the topic of *changing an AOMC's Articles of Association* is discussed, followed by some pointers to *other legal obligations* to which AOMCs are subject.

The Guidance concludes with the topics of *the winding-up and strike-off of AOMCs* followed by a discussion of *the ODCE's role*. Here, it is emphasised that the ODCE is not the primary regulator of AOMCs and that many complaints which arise are more the concerns of property and contract law than company law.

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