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## **SPECIAL NEWSLETTER: MULTI-UNIT DEVELOPMENTS (MUD) ACT 2011**

*Dear Apartment Owner,*

This special newsletter provides you with information in relation to the new Multi-Unit Developments (MUD) Act of 2011. It has been prepared by RF Property Management for your Owners' Management Company, Dewforth Ltd., in association with its Directors (your fellow owners).

This legislation is new and it will take time for agreed interpretations of its different provisions to emerge. This newsletter is not a legal document and does not purport to give legal advice. If there is a particular issue that affects you or your property under the MUD Act, you should seek professional legal advice.

### **What is the MUD Act?**

The Multi-Unit Developments Act of 2011 seeks to put in place a framework for the ownership and management of the common areas of multi-unit developments. It also attempts to facilitate the fair and effective management of the bodies responsible for managing these areas.

The Act relates to apartment developments with over 5 units – some provisions also apply to developments of 2-5 apartments. The Act also applies to 'mixed use' developments, i.e. those with both apartments and commercial units.

The Act was debated extensively in the Dail and Seanad in 2009 and 2010 and became law in early 2011. Most of its provisions came into force on 1<sup>st</sup> April 2011.

The legislation was seen as urgent due to the significant growth in apartment living in Ireland in the past 15 years. The Oireachtas debates set out some of the reasons the legislation was required:

- Existing legislation allowed for common areas not to be conveyed by the developer, even many years after developments were completed;
- Many owners did not understand the idea of becoming part of an Owners' Management Company, or the fact that the Owners' Management Company is distinct from the Managing Agent (e.g. RF Property Management) that runs the development on a day-to-day basis.
- There was a widespread lack of appreciation that, because Owners' Management Companies are companies, they have a range of responsibilities under company law.
- Many developments did not have a Sinking Fund of any kind, and in some cases completely ran out of money and could not undertake any work on the common areas.

The following paragraphs provide a brief overview of some of key provisions introduced in the MUD Act.

### **Transfer of Ownership of the Common Areas**

The MUD Act says that, where at least one unit in a multi-unit development had been sold by 1<sup>st</sup> April 2011, and the common areas of the development were not already transferred to the Owners' Management Company, then the developer would arrange for this to take place within six months, i.e. by 1<sup>st</sup> October 2011.

In arranging for this to happen, the developer will retain a 'beneficial interest' in the common areas, unless 80% of the residential units have been sold.

If the development stage is not completed but at least 60% have been sold, and the owners of the 60% of the units request full transfer of the ownership of the common areas with the developer to retain no further interest, then this shall occur unless there is good reason for it not to occur.

Transfer of the ownership of the common areas will not relieve the developer of his obligations as regards completion of the development. The developer will retain the right to pass through the common areas to allow completion of the multi-unit development.

### **Documentation to be Furnished**

Once the development stage of a multi-unit development has been completed, the developer should hand over a range of documentation to the Owners' Management Company. A list of specific documentation to be furnished is contained in Schedule 3 of the MUD Act.

### **Membership of the Owners Management Company**

When a unit in a multi-unit development is sold, the purchaser becomes a member of the Owners' Management Company. This involves both rights and responsibilities.

Responsibilities include the payment of service charges.

It also includes a requirement to provide the following information to the Company:

- Particulars of the owner's name and address
- Particulars of the names of tenants
- Particulars of any habitual occupiers of the unit other than tenants
- Such other contact particulars as the Owners' Management Company may reasonably request (e.g. telephone numbers or e-mail addresses)

Owners also have the responsibility to notify promptly the Owners' Management Company if there is any change to the above details.

As regards the voting rights of members in an Owners' Management Company, one vote will attach to each residential unit, with each vote of equal value. (If this has not been the case historically, then a party can apply to the Circuit Court to have this situation retained, if they can show good reason why this should happen.)

### **Operation of the Owners' Management Company**

A report must be circulated to members of the Owners' Management Company each year and a meeting held, whose business will include discussion of this report.

The annual report will include information relating to the accounts of the company, information on the Sinking Fund for the development, information on the service charges for the development (and the basis for these charges), information on the insurance policy for the development, information on fire safety in the development, and information on any contracts entered into by the Owners' Management Company that involved a Director or a party related to a Director.

The annual meeting will take place at a location convenient to the development and at least 21 days notice must be given to members of the meeting.

The Owners' Management Company will not enter into any contract that lasts for longer than three years.

### **Service Charges and Sinking Fund**

The Owners' Management Company has a responsibility to establish a system to levy annual service charges in order to support the required expenditure of the Company, including insurance, cleaning, waste management, repairs etc.

The budget can be disapproved by the annual meeting of the Company if this is the view of 75% of the members of the Company attending the meeting (in person or by proxy). In such cases, the budget already in existence will continue to apply for 4 months, to allow for further discussion and adoption of a budget agreeable to the members.

The owner of each unit is under an obligation to pay all service charges levied. The Act also specifies that this holds also for the developer, where applicable.

The Owners' Management Company also has the responsibility to establish a building investment fund or 'Sinking Fund' to cover expenditure relating to refurbishment, improvement or maintenance of a non-recurring nature, or advice relating to such work. The Act states that all Owners' Management Companies must establish a Sinking Fund no later than 1<sup>st</sup> October 2012, and this should be held in a bank account separate to the day-to-day bank account for the development.

The amount to be paid into the Sinking Fund will vary by development (as the appropriate amount to be in the Sinking Fund will vary, depending on the particular needs of the development). The Act states that, in any given year, the amount to be contributed to the Sinking Fund will be either

€200 per unit or another amount as agreed by the annual meeting of members.

The annual service charge and the contribution to the Sinking Fund can be billed together to owners and payment can be enforced by the Owners' Management Company through the courts if necessary.

### **House Rules**

An Owners' Management Company has the right to make House Rules for the development to ensure the effective operation of the development and to allow for the quiet and peaceable occupation of the units by residents.

Such rules should balance the rights and obligations of owners and residents in the development.

House Rules can be adopted or amended by a general meeting of owners.

Where a person breaks the House Rules, the Owners' Management Company can recoup any reasonable costs arising from remedying the breach of rules from the person concerned. A copy of the house rules must be included with all letting agreements.

### **Implications for Hybreasal**

As is clear even from the above brief summary of some key provisions of the MUD Act, the Act will have major implications for all apartment developments, and apartment owners, in Ireland.

In Hybreasal, there is an active Owners' Management Company and the Directors of Dewforth Ltd. meet several times a year to discuss issues of interest to the development, as well as organising an annual general meeting for owners. Prior to this meeting, accounts for the development for the previous year are circulated and the meeting discusses the budget and service charges for the year following the AGM. As such, some key provisions of the Act are already in force.

The Directors will work closely with RF Property Management in 2011, and thereafter, to ensure that the development fully complies with the Act, and that the provisions of the Act are used to protect the interests of owners and ensure Hybreasal remains a peaceful and pleasant place to live.

### **RFPM contact details**

If you have any comments on this newsletter, please contact RF Property Management. As noted, RFPM is not qualified to give legal advice. RFPM can be contacted on 01 888 1414 or [info@rfpm.ie](mailto:info@rfpm.ie). For information on RFPM, see [www.rfpm.ie](http://www.rfpm.ie)

The full text of the MUD Act is available online at:

[www.oireachtas.ie/documents/bills28/acts/2011/a211.pdf](http://www.oireachtas.ie/documents/bills28/acts/2011/a211.pdf)

*Note Prepared in April 2011*