

INFORM

TENEMENT MAINTENANCE



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Fig. 1: A villa converted into two flats is considered a tenement.

TENEMENT MAINTENANCE

In Scotland, the term “tenement” refers to any building divided horizontally into two or more flats. A tenement can be of any age and not just the classic Victorian sandstone block of flats, so characteristic of Scotland’s towns and cities. The legal definition of a tenement also includes cottage flats, multi-storey blocks and converted villas (Fig. 1).

As a tenement flat owner, you are part of Scotland’s unique Romano-Dutch legal history, which made it possible to buy a slice of airspace with rights over the flats above to provide shelter and rights over flats below to provide support (Fig. 2).

This INFORM guide provides an outline of Scotland’s Tenement Law and how owners can use it to ensure that their flat, whether listed or formerly owned by the local authority, continues to provide a warm and happy home within a tenement community.

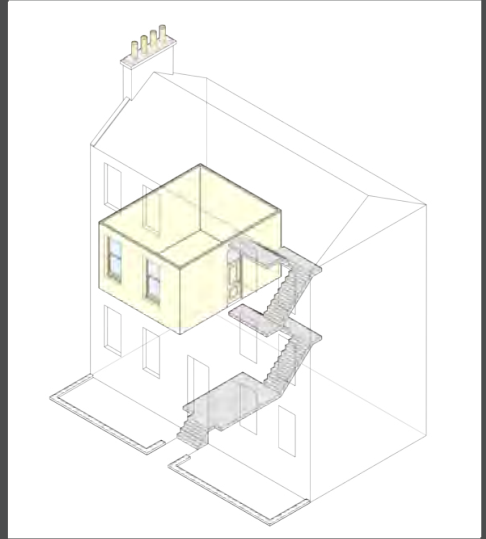


Fig. 2: A drawing of the unit of a tenement flat.

Your tenement community

Every tenement needs appropriate management to help maintain good relations between owners and to ensure prompt maintenance. Appropriate management means establishing good communications between owners and having an effective factoring (property management) arrangement in place.

Working with your co-owners

When you buy a tenement flat, you become the sole owner of the interior of the flat. You also become responsible, along with other flat owners, for the common parts of the tenement building such as the roof, external walls and stairs. You need to make plans and decisions to maintain these along with the co-owners who share joint responsibility for these parts of your building.

Sharing repairs

The general rule is that all owners pay a share of the costs of maintaining the parts of the building which they have

The *Tenements (Scotland) Act 2004* defines common property as:

- *the ground on which your building stands (but not always the garden)*
- *the foundations*
- *the external walls (the outside face)*
- *the roof (including the rafters)*
- *other structural parts of the building such as beams, columns and load bearing walls*
- *the close and stairs (when they are not mutual)*

use of, regardless of who technically owns the part. The roof, the walls and other parts of the structure, which benefit all owners, fall into that category. These are called “common” repairs.

For areas where you are the sole user, such as the interior of your flat, you have individual responsibility to pay for these repairs.

There may also be some parts of a building which only benefit some owners; some flats may have no access to the stair and close, so do not need to contribute to their upkeep, or a chimney head may only serve owners on one half of the building. These are “mutual” repairs and costs are shared between those owners who have use of them.

However, you must check your title deeds as these may give specific rules for your building. (See “*Your rights and responsibilities*” section below.)

How to identify and contact your co-owners

The Registers of Scotland can tell you the names of your co-owners, but the addresses given on titles are often old. The Register of Landlords can be helpful in locating the owners of

rented flats and Scottish Assessors can also give shop owners’ details. Your local authority may also be able to contact owners on your behalf using details given on the Council Tax Register.

Once you have owners’ contact details, consider setting up a web page or chat group on a social media platform to assist with communication. Many owners respond faster to texts than letters, so gathering mobile phone numbers can often be more effective.

Factoring

A large number of tenements are managed by a professional factor or property manager who will charge a management fee to arrange common repairs and insurance. The Property Factors (Scotland) Act 2011 requires factors to work to a statutory Code of Conduct and give all clients a Written Statement of services which also covers how complaints are dealt with. Some tenements are “self-factored”, where owners have to carry out management tasks themselves.

Owners associations

Whether or not your tenement has a factor, it is a good idea to have a separate owners association to aid communications. The association can also deal with issues such as parking, gardening or stair cleaning, if your factor does not already deal with these, as well as with setting up a maintenance account into which owners can make regular payments towards future repairs.

Dealing with reluctant co-owners

Reluctance to carry out repairs can come from owners being unable to afford the cost. Financial advice is useful for these owners and can be obtained from Money Advice Scotland.

Other useful rules from the Tenements (Scotland) Act 2004:

- Owners have a legal duty to maintain their property (both the individual and common parts) so as to provide support and shelter.
- Owners have a legal duty to carry adequate common insurance so that the building can be rebuilt in the advent of fire or other calamities.

Most local authorities offer mediation services to help bring owners together, and all local authorities will offer advice and assistance on dealing with owners who will not participate in repairs. Many local authorities will also offer “missing shares” assistance to cover the costs of owners who cannot or will not pay, but you should confirm with your Council or local authority before you start any repairs. Further advice on available grants and missing shares can be obtained from your local authority’s Private Housing section.

You can also use the “duty to maintain” to allow you to carry out repairs and you can enforce payment via the Sheriff Court’s “Simple Procedures” for individual debts up to £5,000.

Tenement law and your flat **Your rights and responsibilities**

Details of your rights and responsibilities as a flat owner are set out in your individual title deeds. You should have been given a copy of these when you purchased your flat, but they are also available from the Registers of Scotland. When making decisions, you need to follow the conditions of your title deeds in order to identify the common parts of your property and what share of common



Fig. 3: If your gutters are blocked, rain will run into the inside of your walls leading to rot.

repair costs you should pay. Many title deeds, especially the older ones, can be somewhat vague so you may need to turn to the Tenements (Scotland) Act 2004 for a ruling on the matters on which your title deeds are silent or unworkable. Your solicitor will be able to provide further advice on these.

Making decisions

When you come to make a decision about common or mutual maintenance, you only need to get the majority of owners to agree (unless your title deeds say otherwise). Owners who do not agree, have to go along with the majority decision. These decisions can be enforced by the courts. Decisions about improvements, however, need all owners to agree. Most titles say that you need to hold a meeting to take a vote, but it is equally valid to get votes in writing or electronically.

Effective management

Maintenance can save money, preventing damage and consequent expensive repairs (Figs. 3 and 4). More information is also available in Historic Environment Scotland’s *Short Guide 9: Maintaining Your Home*.

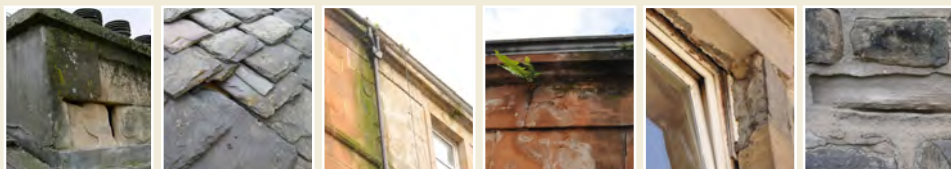


Fig. 4: Typical signs of disrepair (left to right): Decayed stonework on chimneys can be dangerous; slipped roof slates can be spotted from a high point such as a neighbour's flat; blocked and rusted downpipes can lead to damp stonework and rot in internal timbers; gutters need to be cleaned at least once a year to remove leaves and bird guano; defective mastic around windows allows draughts and damp into the building; cement mortar leads to stone decay.

Professional property inspections

A professional property inspection will help identify where repairs are required. Ask your chosen building surveyor or architect to provide you with a five-year repair and maintenance plan, so that all owners can make financial preparations and save towards more costly repairs.

Commissioning repairs

It is important in all buildings, especially older stone-built tenements, to use the right repair techniques and materials. This will help prolong the life of the building and reduce the need for repeat repairs (Fig. 5). Architects and building surveyors can help specify and supervise repairs, put together value-for-money packages of repairs and help you get reliable contractors to carry out the work.

If you decide to commission smaller repairs (under £5,000 total cost) yourself, ask around for names of quality builders or approach trade associations for a list of their members with the aim of getting two or three quotes. Check that builders carry proper insurance before asking for a quote. When comparing quotes, remember that the cheapest may not always be the best value (Fig. 6).

There is more advice on finding good contractors, dealing with owners and paying for repairs on 'Under One Roof' at www.underoneroof.scot.

Buying the best flat

The Home Report may not always give sufficient information on the repair condition of a building, so look around carefully for signs of disrepair externally, before you view internally,

What is maintenance?

- Repair and replacement
- Cleaning, painting, gardening
- Property management - using a factor, insurance, carrying out surveys
- Installing door entry systems and insulation
- "Incidental" improvements - when you replace an item but make it better. For instance, enlarging gutters so that they cope with the wetter winters we now have due to climate change, is still classed as maintenance.

Improvement generally relates to adding something new, such as a communal aerial, where there wasn't one before.

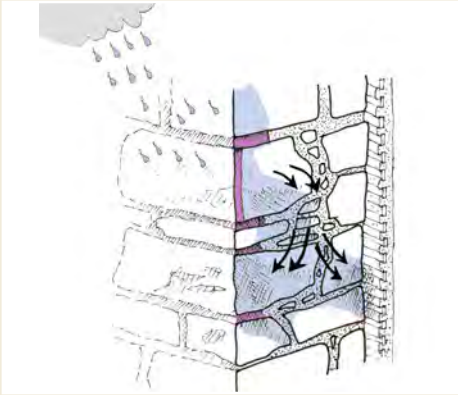


Fig. 5: Lime mortar will help preserve stone by allowing moisture in the stone to evaporate. Cement mortar and patches can prevent this drying action and lead to stone repairs being required more quickly.



Fig. 6: Tenement gutters need to be resilient as they are subject to high winds and need to deal with a lot of rainfall from large roofs and increasingly wet winters. Plastic gutters and downpipes are not really up to the job.

and be sure to ask the owner about anything of concern. Evidence of major and well-supervised repairs in older buildings can be reassuring. If there is a factor, ask them about future plans for the building and any repairs that have been brought to their attention but are not yet dealt with. If you have any doubts, consider getting a more detailed survey – it could prevent you from making an expensive mistake and give you an idea of how much you will need to save to cover upcoming repairs. Check also for signs of good property management, such as a factor or owners’ association. Speak to some of the neighbours if you can and cross check how well owners work together.

Energy efficiency and your flat

Adding insulation to your flat can reduce bills and improve comfort. It can be messy work, however, so it may be best done before you move in. Home Energy Scotland can give free advice on the best materials and techniques for your particular property. For more information see Historic Environment Scotland’s *Short Guide 1: Fabric Improvements for Energy Efficiency*.

A typical tenement maintenance plan:

- Yearly** – clean gutters and check roof covering and flashings
- Every 5 years** – paint and repair windows, gutters and downpipes
- Every 5 years** – professional property inspection
- Every 10 years** – paint close and stair walls
- Every 10 – 20 years** – replace bitumen felt roofs and flashings
- Every 25 – 30 years** – replace tiled roofs
- Every 50 – 100 years** – replace slate roofs

Further reading

Short Guide 1: Fabric Improvements for Energy Efficiency in Traditional Buildings, Historic Scotland (2013).

Short Guide 9: Maintaining Your Home, Historic Scotland (2014).

Various INFORM guides.
www.historicenvironment.scot/archives-and-research/publications

Further information

HES Technical advice

T: 0131 668 8951
E: technicalresearch@hes.scot

HES Casework and designations

T: 0131 668 8716
E: hmenquiries@hes.scot

Local Heritage Trusts

Glasgow City Heritage Trust
T: 0141 552 1331
E: info@glasgowheritage.org.uk

Edinburgh World Heritage Trust

T: 0131 220 7720
E: info@ewht.org.uk

Perth and Kinross Heritage Trust

T: 01738 477 080
E: info@pkht.org.uk

Inverness City Heritage Trust

T: 01463 785 004
E: alison.tanner@highland.gov.uk

Aberdeen City Heritage Trust

T: 01224 522 755

Dundee Historic Environment Trust

T: 01382 902 244
E: info@dhet.org

Stirling City Heritage Trust

T: 01786 498 462
E: manager@scht.org.uk

Other help

Tenement Management

Advice: Under One Roof
W: www.underoneroof.scot

Money Advice Scotland

T: 0141 572 0237
E: info@moneyadvicescotland.org.uk

Home Energy Scotland

W: www.energysavingtrust.org.uk/scotland/home-energy-scotland
T: 0808 808 2282



Property Managers Association Scotland

W: www.pmas.org.uk
E: info@pmas.org.uk



THE ENGINE SHED

The Engine Shed is Scotland's buildings conservation centre. Run by Historic Environment Scotland, it is a hub for everyone to engage with their built heritage. We offer training and education in traditional buildings, materials and skills. For more information, please see our website www.historicenvironment.scot or email technicaleducation@hes.scot



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