

***PROPERTY MANAGERS ASSOCIATION  
SCOTLAND LIMITED***

***RESPONSE TO***

***ISSUES IN IMPROVING QUALITY IN  
PRIVATE HOUSING***

***THE FIRST REPORT OF THE HOUSING IMPROVEMENT TASK FORCE***

# **PROPERTY MANAGERS ASSOCIATION SCOTLAND LTD**

## **Response to**

### **Issues in Improving Quality in Private Housing**

#### **The First Report of The Housing Improvement Task Force**

1. The Property Owners and Factors Association Scotland Ltd was formed in 1986 by an amalgamation of local Associations within Scotland. The principal constituent body within the Scottish Association was the former Property Owners and Factors Association (Glasgow) Ltd, which had been constituted in 1918. In 1989 the members voted for a change of name to the Property Managers Association Scotland Ltd ("PMAS").
  - 1.1 PMAS represents the majority of professional property managers responsible for the management of owner occupied housing units in Scotland and its members currently have under management in excess of 90,000 units of housing accommodation in Scotland, valued at around £13,500,000,000.
  - 1.2 For many years the members of PMAS and its predecessors have been involved in the management of residential properties in Scotland. In particular, in the west of Scotland, property management of multi-owned residential tenements and blocks of flats has been a major activity of our members.
  - 1.3 More recently, residential development in the east coast has become prevalent, and residential property management is now more necessary in areas like Dundee and Edinburgh.
  - 1.4 PMAS and its predecessors has had long experience in the operation and practice of Deeds of Conditions in relation to the management of heritable property throughout Scotland. For some 25 years or so, the Association has been concerned about the lack of adequate maintenance and management provisions in Title Deeds of property in common ownership.
  - 1.5 This response to the Housing Improvement Task Force's document is principally concerned with issues arising from common ownership and specifically the following key conclusions taken from the summary of your document and highlighted at the end of this response.

25, 26, 59, 60, 61, 62, 63, 77, 89 and 90

PMAS members strongly endorse all these conclusions.

2. For some time, PMAS has been advocating change to property legislation and to management arrangements for property in common ownership and have been involved in discussion with the Scottish Law Commission over many years.

- 2.1 PMAS is aware of extensive research carried out over the past ten years into the condition of housing stock, the deficiencies of current property law and subsequent management difficulties. PMAS has been involved in discussion and working groups with the British Property Federation, The Scottish Executive, The Joseph Rowntree Foundation, The Scottish Consumer Council, R.I.C.S. and others. Considerable research has been carried out by these groups into current property law and subsequent working practices, all of which point to the need for reform.
- 2.2 PMAS is concerned that if outstanding matters relating to management and maintenance of property in common ownership are not tackled in the very near future, then the opportunity may be lost for years to come. The Scottish Law Commission have opened a window for change by producing the Title Conditions Scotland Bill and the Tenements Scotland Bill. PMAS welcomes the opportunity of further consideration of these Bills which will come through the Committee system. PMAS feel that it is of vital importance that M.S.P.'s have the opportunity to consider very carefully the effects of these legislative changes with the benefit of continued input from the property industry in Scotland. It is hoped that the work of the HITF will further these issues.
- 2.3 PMAS feels that the housing policy in Scotland has historically focused on problems affecting the public sector and is of the opinion that problems of disrepair, lack of maintenance, inadequate arrangements for maintenance repair and management, affect all sectors of the housing stock. The problems appear to have been exacerbated by the large number of former public sector tenants, now in the private sector and experiencing similar difficulties.
- 2.4 PMAS feels that the rapid increase of home ownership in the 1980's and 1990's has not been matched with adequate education of owners and the provision for maintenance and management of their properties.
- 2.5 PMAS feels that some poorly developed legal and administrative arrangements for managing common property have brought a consequence of neglected maintenance in many tenement properties.
3. A disturbing fact brought out in the CIH report 'Private Renewal or Public Problems' 2001 is that 28% of homeowners with mortgages have no savings or investments whatsoever and a further 12% have savings of less than £1,000. While we mention the issue of reserve funds later in our response, these figures themselves are sufficient proof that reserve funds require to be built up over a period of time to adequately cover future costs of repairs and maintenance. The statistics identified in the report should be noted with concern by Local Authorities. PMAS believes that when pressure is brought upon them Local Authorities will be required to serve more statutory notices for repair and therefore obliged to meet the costs initially.

- 3.1 PMAS feels that the planning system can play a significant part in the way in which new property in common ownership is managed. PMAS members report that housebuilders/developers have conditions imposed upon them at planning consent stage concerning future maintenance and management of residential developments. These obligations are imposed on purchasers through Title Deeds. PMAS feels this is a very important avenue as an opportunity for improvement which is not being utilised sufficiently.
- 3.2 PMAS feels that existing legislation should be utilised to provide protection for home owners where, through lack of adequate management necessary repairs and maintenance are not effected to property in common ownership. Both the Civic Government (Scotland) Act and the Housing (Scotland) Act allow Local Authorities to serve repair enforcement notices. Where these notices are not implemented by owners, the Local Authority may carry out the work by default and recover costs from owners. PMAS members experience is that Local Authorities do not appear to have funding to enforce the terms of notices served. Therefore it is not uncommon that such notices are not always issued to owners of common property. PMAS feels this important avenue has not been utilised to its full potential, to the detriment of housing stock.
4. PMAS feels strongly that the provision for pre-purchase information, relating to management and maintenance obligations for homebuyers is extremely poor.
  - 4.1 In the early 80's, The Scottish Consumer Council (S.C.C.) provided a booklet entitled "Under One Roof". This was a guide for flat owners detailing their rights, responsibilities and obligations in connection with property in common ownership. PMAS feels this was useful and informative but unfortunately was poorly circulated amongst owners of property in common ownership. The principal of what S.C.C. were trying to achieve was entirely relevant and PMAS members feel that this should have been the springboard for further debate and progress.
  - 4.2 PMAS believes that consideration should be given to models from other countries where legal obligations to provide certain pre purchase information to purchasers of property are accepted readily.
  - 4.3 PMAS believes improvement to the house buying process to be desirable. PMAS feels that the process of buying a property should encourage prospective purchasers to obtain the maximum amount of information about that property. PMAS suggests strongly that there should be an obligation on the seller to provide a minimum level of information, prior to a property being available for sale. There are useful models of this type of "disclosure" evident in other countries. New South Wales, Australia, is one such example, whose model is worthy of further investigation.
  - 4.4 PMAS is aware of the Homes Bill introduced to the Westminster Parliament and feels that the pilot scheme tested in Bristol, to provide Sellers Information Packs, is worthy of further investigation.

5. PMAS feels strongly that there is no one central source for owners of property in common to obtain independent advice and that there is a genuine need for such a service. The Citizens Advice Bureaux have endeavoured to provide such a service to occupiers with very limited success.
- 5.1 PMAS supports, in principal, a role for a housing advisory service for private householders.
6. PMAS feels that if adequate Title provision had been made in the past the tremendous strain put on public funds in the 1970's and 1980's would have been avoided. PMAS is concerned that this situation could be repeated unless considered reforms to property law are introduced.
- 6.1 PMAS feels that if provision for sinking/reserve funds and cyclical maintenance were to be incorporated into property Titles, more considered judgement would be required at the time of purchase. PMAS members consider sinking/reserve funds in particular to be desirable.
- 6.2 PMAS members have terminated management of a large number of tenement properties in recent years, due to lack of commitment from owners to fund maintenance and pay for repairs carried out.
- 6.3 PMAS members manage properties where there is provision for sinking/reserve funds, which allows for well maintained properties. This has proved to be beneficial to owners when marketing properties for sale.
7. PMAS consider substantial grant funding for repairs to property in common ownership is of paramount importance.
- 7.1 PMAS members report that the reduction in grant levels, for example in Glasgow, to 75% and subsequently 50% has had a considerable effect on the number of repair schemes which now proceed.
- 7.2 PMAS feels that following award of grant, owners of property in common ownership should be required to provide a maintenance plan. If this plan is not implemented then claw back of grant or some other penalty should be imposed.
8. PMAS believes that the Scottish Parliament should legislate to oblige all owners of newly built developments to adopt a common property management scheme.
- 8.1 PMAS feels that the current common law position is inadequate and that the Tenements Scotland Bill should deem a basic Common Property Management Scheme mandatory. PMAS believes that there is an opportunity to improve management and maintenance of housing stock through enactment of the Title Conditions Bill and the Tenements Bill, although further consideration of the Management Schemes proposed is desirable.

- 8.2 The existing sanctions available to other co-owners and Property Managers, are at best, poor. PMAS believes the current legal remedies against proprietors who do not fulfil their obligation to maintain common property, leads to deterioration in the quality in the country's housing stock.
- 8.3 PMAS believes that property owners must be able to effectively maintain and manage their property in common ownership. To achieve this it is essential that adequate legislative changes are introduced to allow satisfactory recovery of common repair and maintenance costs.
- 8.4 PMAS recognise the unacceptability of recovering management and maintenance costs through the Sheriff Court with all the attendant problems and delays and cost.
- 8.5 PMAS believes the reform of common property law and subsequent management schemes should provide mandatory common building insurance.
9. PMAS members are concerned that mortgage lenders do not appear to consider common maintenance and management issues sufficiently before or after consenting to a loan.
- 9.1 PMAS consider Local Authorities could have new powers to offer loans for repairs and maintenance of common property where other funding is not available.

## KEY CONCLUSIONS REFERRED TO IN THIS DOCUMENT

25. Many owners have relatively little information on the condition of their properties and essentially take a reactive approach to repairs and maintenance. They may postpone action on longer term repair needs or decide to sell rather than address the problem.
26. Some owners may be unaware of the extent of their responsibility for repairs or maintenance work.
59. Many people become flat owners without understanding their particular rights and obligations; this may contribute to the fact that many owners do not fulfil their title obligations in respect of common maintenance, management and repair.
60. There are no specific arrangements in place for the mediation of disputes between owners.
61. The effectiveness of management and maintenance arrangements in flatted blocks is limited by the inability of factors, managers or owners to recover costs from owners and, as a result, a small number of obstructive owners can and do block necessary repair and maintenance work.
62. Where owners do seek to recover costs from non participating co-owners the chances of success are reduced because it is not possible to attach the debt to the property but requires them to pursue the owner as an individual.
63. Whilst the property management services provided by social landlords will in future be regulated by Communities Scotland there is no system for quality assurance or regulation of private sector property managers in Scotland other than the self regulation systems operated by the professional associations.
77. The grant conditions relating to future maintenance are inadequate to ensure that properties that benefit from grant are properly maintained for a reasonable period after the grant has been paid.
89. The current system does not encourage the provision of good quality information to buyers on the running and maintenance costs of the property.
90. As a result of administrative costs and a lack of commercial benefits lenders very seldom use their influence to encourage owners to undertake regular maintenance of their property.