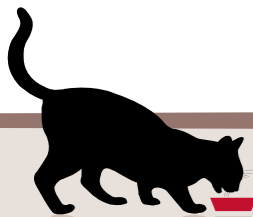


If an owner is bankrupt or can't be found then the costs will be shared equally amongst the other owners (or by floor area if relevant). The non-paying owner is still liable to repay their share of the cost to the other owners, even if those owners have since moved on.

Can you make someone pay?

If you decide to pursue the debt owed then there are a number of things that you can do. If the debt is under £5000 then you can use the simple procedure court process. This procedure is designed to be cheap and easy to use. The Citizen's Advice Bureau and the Sheriff Court can also help.

For larger sums or a more complex problem, you should seek expert advice from a solicitor and obtain a decree from the Sheriff Court by raising an action for payment against the person owing the money. The decree is then given to Sheriff Officers who are asked to serve a document called a "charge" giving 14 days to make payment. If the debtor still refuses to pay, the Sheriff Officer can then be instructed to recover the sums due under the decree (and the legal expenses and expenses of debt recovery). There are then various ways in which the debt can be recovered, ranging from taking the money from earnings to taking control of the property and using the rent to pay off debts. Very often, people will pay up on the threat of using these procedures.



What if an owner sells their flat without paying their share?

If one of the owners in your building sells their flat, they will remain liable for their share of the costs of any repair or maintenance work that was carried out before the sale was finalised. Ideally, they should sort this out with the new owner when they make the sale. For example, the new owner may agree to pay the costs, in return for a reduction in the selling price.

What if the owner leaves without paying?

If, however, they leave without paying, the other owners may have to cover their share of the bill, and can take the previous owner to the Sheriff Court to get the money back.

Can we get the money from the new owner?

You'll only be able to pursue the new owner for the costs if the previous owner, or any of the other owners in the building, registers a 'notice of potential liability of costs' in the Land Register or Register of Sasines (depending on where the deeds to the flat are registered). This must be done at least 14 days before the sale is finalised. In this case, the new owner will be jointly liable for the costs with the previous owner. If the new owner ends up having to pay for the repairs, they'll then be able to take the previous owner to court to reclaim the money. A solicitor can help you register a notice of potential liability of costs.

For more information about money and shared costs see our leaflet Organising and paying for your shared repairs.

Useful Contacts

Edinburgh Shared Repairs Service
www.edinburgh.gov.uk/sharedrepairs
0131 529 6778

Regulatory Services
0131 469 5293

Commercial land and property
0131 529 5828

Property Factors Register
www.scotland.gov.uk/
propertyfactorregister

Registers of Scotland
0800 169 9391
www.ros.gov.uk

Law Society of Scotland
www.lawscot.org.uk

Local Offices www.edinburgh.gov.uk

North East Locality Office
101 Niddrie Mains Road
Edinburgh
EH16 4DS
Email: northeast.locality@edinburgh.gov.uk
Tel: 0131 529 3111

North West Locality Office
8 West Pilton Gardens
Edinburgh
EH4 4DP
Email: northwest.locality@edinburgh.gov.uk
Tel: 0131 529 5050

South East Locality Office
40 Captains Road
Edinburgh
EH17 8HQ
Email: southeast.locality@edinburgh.gov.uk
Tel: 0131 529 5151

South West Locality Office
10 Westside Plaza
Edinburgh
EH14 2ST
Email: southwest.locality@edinburgh.gov.uk
Tel: 0131 527 3800



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EDINBURGH SHARED REPAIRS SERVICE

Organising shared repairs using the Tenements (Scotland) Act 2004



EDINBURGH SHARED REPAIRS SERVICE

Organising shared repairs using the Tenements (Scotland) Act 2004 Tenement Management Scheme (TMS)

This leaflet gives you advice and information about carrying out a shared repair using the Tenement (Scotland) Act 2004. The Act does not override Title Deeds or Deeds of Conditions but is intended to fill any gaps or replace unworkable clauses they may have.

For more details see our leaflet How to Read your Title Deeds. This leaflet will help you understand what can be a complex document. If you need further advice about your Title Deeds contact a solicitor.

In some cases Title Deeds do not mention shared repairs. If this is the case the Tenements (Scotland) Act 2004 will apply.

It aims to make sure that shared parts of the building are kept in good repair and applies to any building that is divided into two or more flats on different floors. The act does not replace Title Deeds but provides a fall back scheme if the deeds are defective or have gaps.

It is important that the correct procedures are used when organising shared repairs in case any disputes arise.

The following table sets out procedures and good practice that should be followed.

Procedure	What the Tenements Act says	Good practice
Contacting owners	Notices must be written and can be posted, faxed or emailed to the owner or their agent. If you can't contact an owner or you don't know who the owner is, then the notice can be posted through the door of the flat, addressed to "The Owner" or "Proprietor". Notice starts from the day of posting or sending.	Speak to people first so that you can answer any questions and then back up what has been said with a written note or letter. If you have to leave a notice for an owner who is not otherwise contactable, get the delivery witnessed, send by Sheriff Officers or recorded delivery.
Tracing Owners		See our leaflet Tracing Owners

Setting up meetings	Give at least 48 hours notice. A meeting is not necessary if all owners (as far as practical) are consulted individually.	Make sure you get written confirmation that someone has agreed to a decision. Make sure they have kept a copy of the letter.
Running meetings	Where owners were not at the meeting or no meeting was held, notification of any decisions must be given quickly.	Do this as soon as possible.
Taking decisions	Majority decision-making is now the rule unless your title deeds say otherwise. Make sure you know whether you are taking decisions about mutual or shared repairs as this could affect whose approval you need. You also need to know if maintenance or improvement work is being carried out. If you're making improvements, the decision of 100% of owners is required.	If you didn't get 100% of owners to agree, wait 28 days to allow for an appeal to be made in the Sheriff Court.
Getting estimates/quotes		Get more than one comparable estimate. It's usual practice to get at least three.
Advance payments	Where owners make advance payment of: more than £100 for one repair or £200 over 12 months, you must give written receipts and the money must be put in a maintenance account. You should supply full details of the work and refund arrangements including: <ul style="list-style-type: none"> • Estimated cost of work • Why the estimate is considered reasonable • How all the owners' shares have been calculated • What all the owners' shares are 	Keep evidence of all expenses incurred and give owners a complete note of the accounts.

What if one or more owners disagree with the decisions made?

It is challenging to get neighbours together and to agree on a course of action. It is important to record meetings and decisions owners have made. An owner can refuse to pay their share if they've not been properly informed of decisions made about shared repairs. In this situation all other owners would need to cover their share of the costs between them. If an owner objects to the work being carried out, and intends to refuse to pay their share on the grounds that they were not properly notified, they must inform the other owners in writing immediately.

If someone owns 75% or more of the property concerned and did not vote they can reverse the decision. However, they must tell all other owners in writing not later than 21 days after the date of the meeting or 21 days after notification of the decision. Owners who did not vote or disagree with a decision can appeal to the Sheriff Court if they feel the decision is:

- not in best interests of the owners as a group
- unfairly prejudicial to one owner.

What if someone does not pay?

If someone does not pay, the other owners must make up the shortfall. In some cases owners may choose to accept this extra cost rather than taking legal action to recover the money due which can be expensive and time consuming.

Bank or building society accounts	This maintenance account (often called the stair account) must be interest bearing and requires two signatures (or that of the property manager)	Keep evidence of all expenses incurred and give owners a complete note of the accounts.
Returning money	You may need to refund money if work does not start within 28 days of your official start date or any other date you have agreed. Any sums left in the maintenance account after work has been paid for will be shared among those who have paid into the account - this includes interest.	Appoint a treasurer