



# Shared Repairs Service: Guide to maintenance accounts

Maintenance accounts or building reserve funds make it easier for property owners in shared buildings to budget and pay for repairs and maintenance to the buildings they own. This guide will help you understand your rights and responsibilities when collecting and dealing with you and your fellow owners money.

## The benefits of a maintenance account

- It makes it easier to pay and plan for ongoing maintenance and small repairs.
- You are more likely to repair and maintain your building.
- You can record who has paid towards repairs
- Better maintained buildings keep their value and are easier to sell.
- You and your fellow owners have a common goal.
- You are likely to have some money saved if large repairs are needed.

Each maintenance account is usually for a single tenement stair or block of flats. This would reflect the owners in the block having responsibility for maintaining and repairing the shared areas of the building.

Money in a maintenance account is usually spent on the upkeep of the shared areas that are jointly owned. It would not be spent on fixtures or fittings within a flat. It is always advisable to check your title deeds to find out what the shared areas of the building are and what you are responsible for. However, owners can agree to spend the money on anything, as long as it's to everyone's, and the building's, mutual benefit.

## Setting up the account

Any one of the owners can start the process of setting up a maintenance account.

## Key steps

You and your fellow owners need to agree:

- Which type of account you want to open.
- Who will take the key roles for operating the account.
- How much money each person will deposit in the account.
- When each owner will pay their share.
- If regular payments for stair or window cleaning are to be made from the account.
- What will happen to money in the account if an owner sells their property.

## Types of accounts

There are two main types of account that people currently use to save and pay for repairs. They are sometimes called a Treasurers Account or a Building Reserve Fund. The Building Reserve Fund is sometimes known as a Sinking Fund.

Ask your bank, building society or credit union for help and advice about which account would be best for you and your neighbours.

## Treasurer's Account

The manager of this account is called a Treasurer and they are responsible for the day to day running of the account. Running an account for a group or society can be time consuming.

Treasurer's accounts are used by charities, clubs and societies to save and pay bills. This type of account is suitable for paying bills for day to day or cyclical maintenance and for larger repairs.

## The role of the Treasurer

Ideally, neighbours should come together and formalise their arrangements by forming an owners' association. Within an association the Treasurer is the person with overall responsibility for the finances. The amount of work involved will vary according to the size of the organisation and the amount of money being dealt with, but the principles and duties are the same.

The Treasurer should:

- Open bank account(s).
- Be one of the dual signatories on any account (minimum of two recommended).
- Pay money received into the bank.
- Keep a record of money received and issue receipts.
- Pay bills and keep a record of money spent.
- Keep an account book of all money going in and out of the organisation.
- Prepare statements to the committee and for the AGM.
- Tell owners how much extra they need to pay towards a bill if there is not enough money in the account to cover it.

The Treasurer manages the accounts and tells members about the association's financial situation. However, it is the owners

association that makes any decisions to spend money.

Usually the Treasurer is one of several members who can sign cheques or release payments for the association. They should never be the only person who signs the cheques.

### Other key roles

Two people will usually have to sign any cheque or make payments from the account; this will be the Treasurer and another Signatory. There should be at least two other Signatories within the owners group who can do this.

### Building Reserve Fund or Sinking Fund

This is an account in which you are saving regular sums of money to build up a reserve to pay for larger repairs. Having a building reserve fund can mean that if major work is carried out the bill is more affordable because there is money to put towards the final account.

In new build blocks it can be a condition in the title deeds that owners pay into a building reserve fund.

When owners sell, all of the money paid into a building reserve fund remains in the account. Selling owners should tell their solicitor about the sinking fund, how much is paid in and how often.

### Setting up the fund

Setting up a building reserve fund can be complicated as you may need to write a condition into everyone's title deeds to ensure that every owner pays their share and that the fund belongs to the building. If the title deeds are not changed a legal agreement binding all the owners will need to be drawn up. You must seek legal advice and consult a solicitor before setting up a building reserve fund.

The building should be surveyed so owners understand the lifespan of different parts of the building and how much it will cost to repair or replace them. The sinking fund is then set up on the basis of building up enough money to pay these long term costs.

### Selling your property

If you are paying into a building reserve fund or sinking fund, any money you have paid in stays with the building when you sell. What happens to the money in a maintenance account depends on the agreement you made when you set up the account.

It is important that when you sell your property that you make it clear at both the point of sale and purchase that there is a maintenance account in operation. This will make it more likely that a new owner will join in and contribute. New owners can only be made to join a scheme if the title deeds state that paying into a scheme is mandatory.

### Paying for maintenance

Some owner occupiers on low incomes may not be able to pay into a maintenance account. There are no grants or assistance available for this. For more information about money and shared repairs see our leaflet – *Organising and paying for your shared repairs*.

If the title deeds or title conditions say that owners must contribute to a maintenance fund, non payers can be taken to court and made to pay.

If all the owners in a building are members of an owners' association and the correct procedures have been followed, decisions made by the association are binding on all owners.

### The Tenements (Scotland) Act 2004 and the Tenement Management Scheme (TMS)

The TMS as laid out in the Tenements (Scotland) Act 2004 can be used by owners to organise repairs if the title deeds are unclear or have no detail about what should happen, or how bills are to be split.

#### The TMS:

- allows owners to decide on and instruct repairs based on majority agreement. This is known as a scheme decision
- allows owners to appoint a property manager based on a majority agreement
- requires all owners to pay their share of repairs and maintenance in advance, based on a reasonable estimate if a scheme decision has been made
- steps in only to plug the gaps when parts of the title deeds are unworkable
- states that if money is to be collected in advance and each owner is to pay more than £100 (or £200 over 12 months) then a maintenance account is necessary.

For more information about using TMS see our leaflet – *Organising shared repairs using the Tenements (Scotland) Act 2004*.

### Unpaid shares

If you go to court to get unpaid money from an owner you will raise a civil action. The type of action you raise will depend on the amount of money that you are trying to claim.

Type of action	Size of claim
Simple Procedure	Up to £5000
Ordinary cause	£5000 and over

A simple procedure court action is designed to be simple and easy to use. You can represent yourself and do not need a solicitor to be involved. You can also represent yourself in a summary cause action but it is worth seeking legal advice as your opponent may have employed a solicitor. Ordinary cause procedure is complicated and there are no standard forms. It would always be advisable to employ a solicitor in these cases.

Before starting any legal action you should always seek advice and consult a solicitor.



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