Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2013

Written submission from Lionel Most on behalf of the Property Law Committee of the Law Society of Scotland

Sections 52 and 53

While Mr Reid has given his personal views [TC1. Donald Reid], the Law Society has not had time to have a full discussion and give a unified view. There is at least one member of the committee who has experience of it leading to confusion and unnecessary cost even in relation to minor issues and who feels that it should be repealed or substantially amended to ensure clarity.

Factors

So far as The Law Society experience is concerned, there has been a history of a material number of home owners being dissatisfied with their factor.

About three years ago I represented the Law Society by giving evidence to the all party committee on factors and land owning maintenance companies held at Westminster (they were looking at the monopoly aspect). The points I make here were made to that committee.

While some of homeowners dissatisfaction relates to the quality of service given by the factor, much of it relates to the lack of communication between the homeowner and the factor. The recent Act introduced by Patricia Ferguson sets out to address this by having a code of practice and better communication. It does seem to be that there is a better relationship between homeowners and factors where there is a residents association.

While we recognise the need to be able to switch factors, quite often switching alone is not the solution. Indeed, it may be that switching will not be popular either.

Very often a homeowner is dissatisfied with the factor not because of the factor but because they are having to pay for something for which they have no direct benefit. Professor Rennie addresses this in relation to the leaky roof.

There is also a perception that whereas owners within a tenement building have a vague idea that they are responsible for common repairs, owners within a housing development do not perceive themselves as being responsible for the grass cutting and the shrub maintenance furth of their properties.

This can be dealt with by way of better communication. A residents’ association or on agreed point of contact makes for better communication and therefore for a better relationship.
The Law Society of Scotland Property Committee (then named the Conveyancing Committee) formulated a leaflet for purchasers as to what to expect from their solicitor when buying a property. Within this leaflet there is a rundown of typical burdens within a typical property title. This includes the obligation to pay a factor or managing agent for maintaining the common parts of the development or building.

In the review of The Law Society Property Committee, much could be achieved by good communication at the planning stage and at the marketing stage of a development. So for example, there could be a planning condition inserted by the local authority when consenting to a housing development that the developer must disclose details of at least the heads of charge and the sorts of things that the owners will be responsible for. While this is done to a certain extent at the moment by the better developers, it would be good to make it more forceful.

There could also be obligations on developers to make more information available. There is also the possibility in a new development of the developer providing a local authority with a bond to finance maintenance over a ten year period. A local authority might not be keen to be involved in such an arrangement but where the common areas incorporate a S.U.D.S it is important. Perhaps this could be explored.

Additionally a bond could be used to guarantee the initial layout of the common areas.

Much can be said for education of homeowners. Homeowners and others have to realise that they live within a community and they have duties to that community. Just because they live at the end of a large housing development, it does not mean that they should not be responsible for the maintenance at the other end.

There are also a small minority of homeowners objecting to the practices of the land owning maintenance companies. Here good communication will help but as some of the commentators have pointed out, there is difficulty with this system and how it sits within Scots Law.

You may wish to consider the possibly of a “right to buy” the land owned by the land owning maintenance company for example in the same way as there is a community right to buy a community asset. This would need to be thought through properly and suitable protections given against for example the land falling into the wrong hands and the land being for the benefit of the relevant community in the longer term. This might be done by special vehicle or by passing the land in common to all the owners (although that would have its difficulties in Scots Property Law in that a conveyance to each property would be required).

Lionel Most
Partner
Burness Paull & Williamsons LLP
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