

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Repairs: Costs and Access

Section 12 – Liability of owner and successors for certain costs

67. This section deals with the apportionment of liability for repair and other costs when a flat is sold. It makes it clear that an owner does not cease to be liable when he or she ceases to own a flat. *Subsection (1)* provides that an owner will remain liable for relevant costs after the property has been sold. This restates in statutory form the principle of the existing law by which liability which has crystallised cannot be avoided by disposing of the property. Relevant costs could arise by virtue of any tenement burden, the Tenement Management Scheme or under a provision of the Act.
68. *Subsection (2)* deals with the liability of an incoming or “new” owner of a flat. A new owner is severally liable with the outgoing owner. If there are two or more new owners, both or all are bound. This is, however, subject to the provisions of *subsection (3)* which provides that an incoming owner will be liable for the cost of maintenance which has been carried out prior to the date on which the new owner becomes the owner of the flat only if a notice of potential liability for costs in a form prescribed in schedule 2 has been registered in the property registers (on or before a date 14 days prior to the new owner becoming the owner). Liability for the cost of completed maintenance where no notice has been registered is thus excluded. In other words, if no notice is registered, the purchaser is not liable. Where a notice is registered, then a new owner would be liable for the full amount of the maintenance costs in respect of the work described in the notice. This notice procedure does not apply to work carried out as a result of a statutory notice imposed by a local authority. Such notices will have effect for three years and will only bite against the new owner if they have not expired before the acquisition date.
69. *Subsection (4)* defines “acquisition date” and “local authority work”. The phrase “acquisition date” is tied to the date on which the purchaser acquires right to the flat. This wording has been generally used in recent legislation and is used in connection with the definition of owner in *section 28* of the Act. In the case of a typical purchase, a person has right to a flat once that person has received a disposition or another form of conveyance of the flat – this will be delivered along with the keys in return for payment of the purchase price. In other words, the date of acquisition is the date on which the person becomes owner.
70. Where the new owner pays any relevant costs, under *subsection (5)* they may recover the amount paid from the former owner, if the former owner is liable.
71. *Subsection (6)* is a transitional provision, explaining that *section 12* will apply in relation to any relevant costs that the owner becomes liable for on or after the day on which the section came into force (28 November 2004).