

Data Protection Considerations Relating to Multi-Unit Developments and Owners' Management Companies

Introduction

An increasing proportion of Ireland's population lives in apartments and houses situated in multi-unit developments (MUDs) and estates having shared spaces and services. In most cases these common areas and shared facilities are owned and controlled by an owners' management company (OMC) which is typically a not-for-profit legal structure established for the management of multi-unit developments under the Multi-Unit Developments Act 2011 (the MUDs Act). The OMC must operate in accordance with the Companies Act 2014 (the Companies Act).

An OMC sits at the centre of relationships between residents (owner-occupiers and tenants), landlords, and property management agents. OMCs engage with estate stakeholders including social and public housing bodies, professional advisors, and service providers.

OMCs process and transmit data in the exercise of their functions in relation to, for example, property title, financial management, and compliance with various legal obligations.

Relationships

This guidance sets out general advice on common data protection issues that may arise in the course of interaction between:

1. OMCs and their members
2. OMCs, OMC members, and a property management agent
3. OMCs and third parties

1. OMCs and their Members

Register of Members – Companies Act

Every company is required to keep a register of its members¹. In the context of an OMC, the register of members is the list of the names and addresses of members/owners in the MUD.

¹ Section 169(1) of the Companies Act 2014

The company is obliged to make the register available for inspection, and must, when requested provide copies of the register, or copies of parts requested.

The following particulars must be entered in the register:

- the names of the members
- the addresses of the members
- a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- the date at which each person was entered in the register as a member; and
- the date at which any person ceased to be a member.

Section 169 of the Companies Act also prescribes how and when the register must be updated for new and departing members.

Companies Limited by Guarantee (CLGs)

Most OMCs are incorporated as companies limited by guarantee (CLG) not having a share capital, meaning that CLGs have members rather than shareholders. Under [Section 1201](#) of the Companies Act, names and addresses of CLG members must be entered in the register. However, section 1201 modifies section 169 of the Companies Act as it applies to CLGs to reflect that a statement of shares held, and amount paid up, are terms without application to CLGs, and therefore such requirements are omitted in respect of members' registers of CLGs. However, if an OMC is incorporated as other than a CLG, e.g. as a private company limited by shares, or designated activity company (DAC), shareholding details shall be reflected on the register.

Register of Members – a Public Document

Sections 215 to 217 of the Companies Act provide that a members' register is a public document. This means that it must be made available by the company for inspection by any member of the company itself, or by any other person.

The register shall be open to the inspection of any member of the company without charge. Any other person may inspect the register on payment of the relevant fee. A company must, on request, provide a copy of, or a copy of an extract from, and may charge a small fee (currently no more than €10 per register) to a requester for doing so.

A company has 10 days after the date of receipt of a request and on payment to it of the fee to send the material to the requester.

Failure to comply with section 216 of the Companies Act is an offence for the company and any company officer in default.²

Meeting Minutes

OMC members are entitled to copies of the minutes of general meetings of the company³.

Members do not, however, have a statutory entitlement under the Companies Act to inspect the minutes of directors' meetings.

Subject to certain exceptions, persons who are not members of the company do not have a right of access to minutes of members' meetings, nor to minutes of directors' meetings.

Use of the Register by Members

As noted above, the Register of Members is a public document and may be accessed by any member, free of charge. The processing by OMC members of personal data contained in a Register of Members, in relation to the affairs of the OMC, must be conducted in compliance with the principles of data protection.

The principle of purpose limitation requires that personal data shall be collected for specified, explicit and legitimate purposes. Examples of such legitimate purposes would be writing to fellow company members in relation to voting at company general meetings, the election of directors, approval of annual charges, or the setting of house rules. It would not be appropriate or legitimate for OMC members to use the personal data of other members for purposes that are unrelated to the affairs of the OMC, such as to advertise their own business interests.

It should be noted that members of the OMC have a right to access only personal data of members as is contained in the register prepared for the purposes of the Companies Act, i.e. names, addresses, and dates of entry on the register. The right of access does not extend to other data that the OMC may be required to retain, such as telephone numbers or email addresses (save to the extent that the email address has been provided for the purposes of sending or receiving notices, information or other documentation relating to the governance of the company) or the personal data of tenants, as provided by members/unit owners in compliance with their obligations under [section 8\(3\)](#) of the MUDs Act (see below).

² Section 217(3) of the Companies Act 2014

³ Sections 215 to 217 of the Companies Act.

OMCs & Financial Management

As noted, most OMCs are bodies corporate, and are most often found to be incorporated as CLGs. The governing document of a company is its constitution. Among the matters set out in a company constitution are the company's objects and powers.

One such power afforded to the company may be the power to process personal data concerning payment or non-payment by members of OMC annual service charges, including the power to disclose such information to some or all of the members of the company, as and when necessary. However, any such disclosure must be justified as both necessary and proportionate to achieve a specific, explicit and legitimate purpose, in accordance with data protection law. It could also include a power to disclose to other members information in relation to breaches by a member/unit owner and/or any tenant, of lease covenants, house rules, regulations, restrictions, byelaws, or other similar provisions relating to the estate. The processing of personal data of members of an OMC in accordance with the constitution should be transparent, and members should be adequately informed of any processing that may take place.

When carrying out its functions in accordance with its constitution and its legal obligations, the OMC should adhere to the principle of data minimisation. This requires that personal data shall be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed, and that the processing of personal data should be avoided where it is not strictly necessary.

For example, an OMC may be required to provide certain financial information to its members with regard to the management of annual service charges. In general, this should be achieved without disclosing the personal data of members, unless necessary and reasonable. Respect for confidentiality should be maintained in circumstances where directors of OMCs have access to information regarding their neighbours' good standing as to payment of annual service charges.

The processing of this type of data in terms of disclosing it to a legal advisor in relation to legal proceedings, or to a debt collection agent are also examples of legitimate processing. The disclosure of personal data held by an OMC to An Garda Síochána for law enforcement purposes is also permissible, in accordance with section 41 of the Data Protection Act 2018.

CCTV in Common Areas

OMCs may wish to consider installing CCTV systems to conduct security surveillance of common areas, such as car parks and bicycle storage sheds. The Data Protection Commission (DPC) has published comprehensive guidance on the data protection

implications of the use of CCTV. This guidance should be consulted by any OMC that is considering such a measure and is available at:

https://www.dataprotection.ie/sites/default/files/uploads/2019-10/CCTV%20Guidance%20Data%20Controllers_October19_For%20Publication_0.pdf

Where a CCTV system has been implemented, OMCs should in particular be aware of their obligation to control access to footage and to avoid the disclosure of personal data in a manner that disproportionately impacts the rights and legitimate expectations of privacy of individuals.

2. OMCs, OMC Members, and a Property Management Agent

Role of Agent – Servant of OMC

In many cases an OMC will employ a property management agent. Under the instruction of the directors of the OMC, the agent arranges services such as insurance, repairs and maintenance, and waste collection for the MUD. The relationship, including instructions and service levels, between an OMC and a property management agent (also known as a property services provider) is governed by a letter of engagement or contract. This contract is subject to the relevant legislation, such as the [Property Services \(Regulation\) Act 2011](#), and the functions of the [Property Services Regulatory Authority \(the PRSA\)](#) (see below).

Property Management Agent as Data Processor

Where a property management agent processes personal data in the course of carrying out its duties, it will be necessary to determine the capacity in which it does so.

It is likely that in most cases where the property management agent processes the personal data of OMC members or residents of the development, it will do so as a data processor acting on behalf of the OMC, which is a data controller. In this situation, this processing of personal data should be governed by an appropriate data processing agreement, in accordance with Article 28 GDPR. The DPC has published guidance on Controller-Processor contracts here:

<https://www.dataprotection.ie/sites/default/files/uploads/2019-06/190624%20Practical%20Guide%20to%20Controller-Processor%20Contracts.pdf>

Other situations may arise where the agent is required to process the personal data of OMC members, residents or other third parties for purposes that are not carried out directly on behalf of the OMC. This might occur, for example, where the agent is engaging with a resident in relation to a query about common areas. In this situation, the agent is a data controller, and is responsible for ensuring that any such processing is conducted in compliance with the Data Protection Legislative frameworks.

The PSRA has prepared a template [Letter of Engagement 'D' – The provision of Property Management Services](#) for use between agents and OMCs. The template letter is provided in editable format. Certain items must be completed in the contract. These matters are designated in the template.

It is useful to note that Clauses 11.3 and 25 of the PSRA's template refer to data protection:

*"11.3 * Consequences of Termination of Agreement*

The Client shall be liable to pay all fees and expenses, due under this Agreement, within <NUMBER> days of receiving the final invoice from the Agent.

The Agent:

(a) shall not impede the introduction of a new agent, and

(b) subject to Data Protection regulations, shall, where requested, transfer all records held which are the property of the Client to the Client or a person nominated by the Client, including the transfer of electronic records promptly and without delay and in any event no later than <NUMBER> days after being requested to transfer the records."

"25. Data Protection

<NAME OF BUSINESS ENTITY> will process all your personal information in accordance with the relevant Data Protection Laws and Data Protection policy of the Client."

Personal Data Breaches

Article 33 GDPR requires a data controller to notify the DPC of a personal data breach not later than 72 hours after having become aware of it.

Depending on the assessment of risk, it may also be necessary to communicate information about the breach to affected persons.

While these notifications are the responsibility of the OMC as a data controller, a property management agent can be authorised to assist in the performance of these tasks as a data processor under the terms of the data processing agreement. In many cases, the property management agent will be aware of the personal data breach before the OMC as they are handling the day-to-day processing of personal data. For more information on breach notification, refer to the published guidance of the DPC.

<https://www.dataprotection.ie/en/organisations/know-your-obligations/breach-notification>

3. OMCs and Third Parties

Owners' & Others' Particulars – MUDs Act

[Section 8\(3\)](#) of the [Multi-Unit Developments Act 2011](#) states-

"A unit owner (whether the owner of a residential unit or a commercial unit) shall be under an obligation to furnish to the relevant owners' management company—

(a) particulars of his or her name,

(b) particulars of his or her address,

(c) particulars of the names of the tenants in the unit,

(d) particulars of any habitual occupiers of the unit other than tenants, and

(e) such other contact particulars as the owners' management company may reasonably request,

and shall promptly notify the owners' management company of any change in such particulars."

This means that, for example, a landlord owning a home in a MUD is required by law to provide tenants' details to the OMC. In the interests of transparency the fact that this information will be provided to the OMC should be brought to the attention of the tenant by the landlord or the landlord's representative at the earliest opportunity in their engagement.

It might be considered reasonable for an OMC to request contact particulars such as telephone numbers and email addresses of owners, tenants, or habitual occupants, under section 8(3)(e) of the MUDs Act. Reasons for which an OMC would retain residents' data include the safety and wellbeing of occupants, and attending to estate management matters, for example:

- Arranging agent's attendance at emergency situations, e.g. leaks or fires
- Applying estate house rules in relation to parking practices or noise disturbances. In this context, [section 23\(1\)](#) of the MUDs Act states that House Rules-
"...shall be binding on-
(a) unit owners,
(b) tenants of unit owners, and
(c) servants, agents and licensees of persons referred to in paragraphs (a) and (b)."

By obtaining tenants' details OMCs may verify that units are not being used for purposes impermissible under the head lease.

- The OMC may ensure that it is meeting obligations in connection with, for example-
 - The estate head lease between the homeowner, the OMC, and the developer
 - Conditions of the block insurance policy
 - Requests from law enforcement authorities

Importantly, the retention and processing by an OMC of personal data in order to comply with its obligations under the MUDs Act should be distinguished from the requirement for the OMC to maintain the Register of Members in compliance with the Companies Act. These are two separate and distinct sets of records, that may be used only in the manner already outlined.

For completeness, it is noted that the regulation of certain landlord-tenant relationships is a matter for the Residential Tenancies Board. Information and resources of assistance are available on their website- www.rtb.ie.

4. Data Subjects' Rights

OMCs as data controllers have an obligation to facilitate the exercise of the rights of data subjects under the GDPR. This includes responding to Subject Access Requests requesting the provision of copies of personal data in a timely manner. A property management agent acting on behalf of an OMC can be authorised to assist in handling such requests under the terms of the data processing agreement.

<https://www.dataprotection.ie/en/organisations/know-your-obligations/access-and-portability>

Where can I find further guidance materials?

Stakeholders can find information about compliance with company law by consulting the websites of the [Office of the Director of Corporate Enforcement](#) and the [Companies Registration Office](#).

Information on the licensing and regulation of property management agents is available from the [Property Services Regulatory Authority](#).

[The Housing Agency](#) has prepared resources for homeowners in managed estates.

The [Residential Tenancies Board](#) maintains a register of private residential tenancies, tenancies of approved housing bodies and student-specific accommodation tenancies. It

provides a dispute resolution service for tenants and landlords, and carries out research into the private rented sector.