Who is responsible for maintenance in medium-density housing?

Responsibilities for maintenance in medium-density housing are shared between owners (or landlords and tenants) and bodies corporate. Legal requirements are set out in different laws and regulations overseen by different parts of government. This fact sheet brings together the key elements and sets out the roles and responsibilities of the parties.

A SURVEY of occupants in New Zealand medium-density housing (MDH) found they were more uncertain about home maintenance than occupants of stand-alone houses. As an example, occupants in low-rise or high-rise apartments were three times more likely to be unsure about the frequency of maintenance of their roof cladding compared to occupants of stand-alone houses.

While house owners say their greatest barriers to home maintenance are lack of money and a lack of time, residents in MDH say the barriers are a lack of money and a lack of knowledge.

Part of the lack of knowledge among MDH occupants may stem from the more complicated situation around maintenance involving owners (or landlords and tenants) and bodies corporate.

High-level responsibilities

At the highest level, the Building Act 2004 and the New Zealand Building Code require that building owners must ensure the health and safety of a building's occupants. Many building elements are required to have a minimum durability with normal maintenance within categories of 5, 15 and 50 years. It is up to the building owner to ensure that these elements are inspected and maintained within that timeframe.

Larger MDH developments are likely to require a compliance schedule – a document giving information about specified systems in a building such as lifts, sprinkler systems or riser mains for fire service use. Specified systems are listed in Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. MDH that requires a compliance schedule also requires an annual building warrant of fitness. This verifies that the inspection, maintenance and reporting procedures for the specified system(s) have been properly carried out. This whole area is the responsibility of building owners/bodies corporate.

The Building (Earthquake-prone Buildings) Amendment Act 2016 sets deadlines for identifying, strengthening or demolishing earthquake-prone buildings. The Act applies to residential buildings that are 2 storeys or more and have three or more dwellings, so it is relevant to MDH. This is having a significant impact on higher-risk constructions in higher-risk locations such as Wellington.

Owner responsabilities

Owners of units in apartment blocks, townhouses and suburban flats often own their own home in a form known as unit title (occasionally referred to as strata title). Unit title owners own their apartment or unit outright and anything else listed in the property title, such as their own car park or garage space. They hold an undivided share of the common property – shared driveways, footpaths and gardens, entry lobby and so on. This type of ownership is covered by the Unit Titles Act 2010 and Unit Titles Regulations 2011.

All owners in a unit title property are part of the body corporate, which holds an annual general meeting and forms a committee that makes day-to-day decisions. The body corporate is responsible for maintenance of:

- common property, including infrastructure (pipes, wires, gutters and so on) and building elements (the structural integrity of the building and its overall look)
- assets owned by the body corporate
- assets used in connection with the common property
- parts of the building that serve more than one unit.

Owners pay an annual fee to the body corporate to cover costs such as maintenance work by outside contractors and insurance. (The body corporate must insure and keep insured all buildings and other improvements to their full insurable value.)

Many bodies corporate appoint managers, although this is not regulated under the Unit Titles Act. Among other duties, it is common for managers to organise repairs and maintenance and assist in the development of long-term maintenance plans.

The Unit Titles Act requires bodies corporate to establish and update a maintenance plan covering a period of at least 10 years to:

- identify future maintenance requirements and estimate likely costs
- support the establishment and management of funds to cover this
- provide a basis for levying owners
- provide guidance to the body corporate in making its maintenance decisions.

Specific information that must be included in the maintenance plan is set out in Regulation 30 of the Unit Titles Regulations. MBIE has produced plan templates for large and small developments, available at www.unittitles.govt.nz. Anyone who is part of a body corporate can ask the chairperson to show them a copy of the maintenance plan.

Many bodies corporate have a long-term maintenance fund. This money can only be spent on work set out in the long-term maintenance plan. (If a body corporate chooses not to have a maintenance fund, this decision must be made by special resolution.)

Sometimes a body corporate incurs costs not included in its budget or covered by the annual fee, and owners must pay a special levy.

While costs are typically divided equally between owners, some owners may be required to pay more than others for work if they receive greater benefits or the work is on something inside their unit or the work was necessary because of damage they caused or is the result of their negligence.

The owners of apartments/units are responsible for maintenance inside their properties. Under the Unit Titles Act, owners must repair and maintain the unit and keep it in good order. In particular, they should not do anything that allows damage or harm to other units or common areas. Where units are detached, owners may also have responsibility for exterior maintenance on their property.

If the body corporate (or an agent for the body corporate) needs to access a unit to carry out repairs and maintenance on services or infrastructure that affects multiple units or common property, they can do that at any reasonable hour after giving reasonable notice. They also have this right of entry to view the condition of a unit, checking that unit owners or occupiers are meeting their obligations under body corporate rules. They can enter a unit at any time in an emergency.

Any costs that relate to repairs to or maintenance of building elements and infrastructure in a unit that the body corporate pays for must be paid back by the owner of the unit.

Maintenance has been a problem for many bodies corporate. In December 2016, the government issued a discussion document of reforms. One of the proposals for reform was to ensure adequate long-term maintenance plans and funding. Many submissions were received, but no action to reform the Act followed.

In July 2020, Judith Collins introduced a Member's Bill to Parliament – the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill. Among the purposes of the Bill described on the Parliamentary website, one is: "To ensure that planning and funding of long-term maintenance projects is adequate."

Certain information about maintenance needs to be disclosed to potential buyers when unit titles are sold (see section 33 of the Unit Titles Regulations). This includes:

- details of maintenance the body corporate proposes to carry out in the next year and how the body corporate intends to pay for it
- whether the unit or the common property is or has been the subject of a claim under the Weathertight Homes Resolution Services Act 2006 or any other civil proceedings around weathertightness.

Landlord and tenant responsibilities

The landlord and tenant share responsibility for property maintenance. Many of the rules

are in the Residential Tenancies Act 1986 and Regulations. There is some overlap with other laws. For example, body corporate operational rules made under the Unit Titles Act are taken to be terms of a tenancy agreement under the Residential Tenancies Act.

By law, landlords must keep the plumbing, electrical wiring and structure of the home safe and in working order and make sure that locks and fastenings work. (Neither landlords nor tenants can change locks without the other's consent.) Landlords must maintain the premises in a reasonable state of repair.

Under the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, all rental homes must have smoke alarms. While the landlord must provide the alarm, it is the tenant's responsibility to replace worn-out batteries in alarms.

Tenants have to keep the overall property reasonably clean and tidy. This usually includes basic tasks such as cleaning readily accessible windows. Tenants should ventilate a house (by opening windows and using any bathroom or kitchen extractor fans present) to reduce the risks of excess moisture or mould forming. They should clean away mould.

With garden areas that are part of a unit (not common areas), responsibilities are often split. The tenant may keep things generally tidy while the landlord prunes hedges, shrubs or trees. The work should ideally be agreed at the start of the tenancy and the agreement recorded in writing. Tenants shouldn't change the garden – cutting large branches off a tree or digging out shrubs – without talking to the landlord first.

Changes to the Residential Tenancies Act in 2020 (taking effect from February 2021) mean that tenants can request permission to make a change to the property and landlords must not decline if the change is minor. Landlords can place reasonable conditions on the changes. Examples are installing a baby safety gate, fixing down furniture to reduce the risk of earthquake damage or fitting a security system. In these situations, the tenant is responsible for the costs and any required maintenance.

Tenants should notify the landlord as soon as they are aware that repairs are needed, but they cannot withhold rent until the repairs are done. They should inform the landlord of any damage done to the property. Landlords who are outside New Zealand for more than 21 days must have an agent in New Zealand who the tenant can contact.

Where landlords ignore requests for repairs or maintenance, tenants can issue them a notice to remedy. This sets out what is wrong and what the landlord needs to do. Where a landlord has ignored repeated requests for action on a reasonably serious problem, a notice to remedy with a 14-day timeframe may be appropriate. If the landlord still fails to act, the tenant can apply to the Tenancy Tribunal for a work order to get the work done. They can ask for compensation for the inconvenience and even exemplary damages in some cases.

Landlords cannot give notice to end a tenancy because the tenant has asked them to carry out repair or maintenance work. This is called a retaliatory notice. Tenants who receive a retaliatory notice can apply to the Tenancy Tribunal within 28 days of receiving the notice to have it set aside. The Tribunal can award exemplary damages against the landlord of up to $4,000.

Access for maintenance and inspections

Landlords who want to carry out necessary maintenance or repairs, repair/replace smoke alarms or work on requirements around insulation or the healthy homes standards can do this between 8am–7pm after giving 24 hours' notice.

Work on a property that isn't necessary can only be done at a time agreed by both landlord and tenant.

Landlords should occasionally inspect a property and must give notice to the tenant at least 48 hours before the inspection but no more than 14 days ahead. The inspection must fall in the hours 8am–7pm (or 8am–6pm for boarding houses).

Tenants should be given the opportunity to be present at an inspection, but they don't have to be there. If they aren't there, they should be asked if there are any maintenance concerns or suggestions they have.

Healthy homes standards

The healthy homes standards are being implemented for rental homes including MDH. They cover improvements to heating, insulation and ventilation. The specific requirements are set out in the Residential Tenancies (Healthy Homes Standards) Regulations 2019. There are three key dates for their introduction:

- 1 July 2021 – private rental properties must comply with the healthy homes standards within 90 days of any new tenancy and all boarding houses must comply.
- 1 July 2023 – Kāinga Ora – Homes and Communities and registered community housing provider houses must comply.
- 1 July 2024 – all rental homes must comply.

More information

BRANZ resources

- BRANZ Facts: Medium-density housing #1–14
- www.mdh.org.nz
- Study Report SR444 *Residents' perspectives of maintaining medium-density housing*
- Study Report SR386 *Maintenance and common repair issues in medium-density housing*

Other resources

- Unit Title Services – www.unittitles.govt.nz
- Compliance schedule handbook – www.building.govt.nz/building-code-compliance/building-code-and-handbooks/compliance-schedule-handbook/
- Tenancy Services – www.tenancy.govt.nz/maintenance-and-inspections
- Healthy homes standards – www.hud.govt.nz/residential-housing/healthy-rental-homes/healthy-homes-standards/

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