**A Guide to Missing Shares**

**Useful information for home owners on applying for a missing share**

**June 2016**

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**How to use this guidance**

This guidance is designed to provide owners with information on what a ‘missing share’ is and provide clear and consistent information to the majority of owners on how they can apply to the Council for a missing share.

The guidance is set out in a chapter based format which describes the key steps to be taken by the majority of owners wishing to apply for a missing share in respect of maintenance works to their property. The guidance also includes a number of templates which are designed to be used by owners to assist them with contacting other owners, complying with the application process and putting plans in place for future maintenance.

**What is a Missing Share?**

Missing share is the term used to describe an amount which represents an owner’s share for maintenance costs where that owner is unable or unwilling to pay their share or where that owner cannot be found. The Housing (Scotland) Act 2006 allows, but does not oblige, Council’s to pay a missing share where a proper application is made by the majority of owners who wish to undertake maintenance works but cannot do so because a share or share(s) of the cost is missing.

**How to apply for a Missing Share**

The application to the Council for a missing share must satisfy all of the undernoted criteria before it can be considered to be a valid application;

* A written request to the Council for a missing share, signed by the majority of owners;
* evidence of a Maintenance Account being in place;
* confirmation that costs are apportioned correctly;
* that the works meet the definition of maintenance;
* contact/attempted contact with the owners and any responses received;
* confirmation that costs are reasonable;
* attempts to secure alternative funding;
* formal notice having been given to all owners noting the repairs, the costs, the date the share is required to be paid;
* the proposed works start date if all shares paid; and
* submission of a Maintenance Plan which outlines future maintenance proposals for the building.

## Works must not start prior to the approval of a missing share.

Once the Council has all the information a decision can be made on whether or not a missing share is to be paid. Any missing share will be paid directly to the maintenance account upon completion of works and submission of an appropriate invoice. A debt recovery process will be followed for recovery of all costs including interest and fees.

The following chapters provide clear and consistent information to the majority of owners on how they can apply to the Council for a missing share.

1. **Applying for a Missing Share**

Inverclyde Council may, under certain circumstances, be able to assist owners in situations where communal maintenance is required but works cannot be progressed as a result of an owner, or owners, being unwilling or unable to fund their share of the required works, or where owners cannot be found.

In such situations Inverclyde Council may pay into a maintenance account a sum which represents the cost of a share which remains unpaid by an owner for communal maintenance. However, the payment of missing shares will only be considered when owners have satisfied their legislative obligations and can evidence that alternative options have been exhausted. For clarity, the payment of a missing share will only be considered as a last resort. An application for a missing share must come from the collective of majority owners who are trying to progress maintenance works.

For Inverclyde Council to consider an application, the majority group of owners must make sure that all of the undernoted conditions have been met;

* 1. A written request to the Council for a missing share, signed by the majority of owners;
  2. evidence of a Maintenance Account being in place;
  3. confirmation that costs are apportioned correctly;
  4. that the works meet the definition of maintenance;
  5. contact/attempted contact with the owners and any responses received;
  6. confirmation that costs are reasonable;
  7. attempts to secure alternative funding;
  8. formal notice having been given to all owners, by owners, noting the repairs, the costs, the date the share is required to be paid;
  9. the proposed works start date if all shares paid; and
  10. submission of a Maintenance Plan which outlines future maintenance proposals for the building.

A template checklist of these conditions is set out at Appendix A to assist owners and if all of the above conditions have been met then the Council will consider an application for a missing share for maintenance works which fit within one of the undernoted priority categories;

1. Works being carried out in response to a Notice.
2. Works to address Serious Disrepair.
3. Works as part of an individual property investment/improvement programme.
4. Works as part of an area based investment/improvement programme.

Applications for any other reason will be considered on a case-by-case basis subject to the availability of appropriate Council resources.

If a decision is made that the Council will pay a missing share into a maintenance account, Inverclyde Council will make attempts to establish contact with the owner and make them aware of their rights and responsibilities. The Council will also confirm that in each and every case they will recover the missing share, interest charges and administrative costs via the Council’s debt recovery process and will ultimately place a repayment charge against that owner’s property.

1. **Maintenance Account**

Any application for a missing share will require to be supported with proof that owners have a maintenance account in place for the lodging of deposits and payment for works relative to maintenance and repair of their property.

A maintenance account is a bank or building society account set up to hold owner’s funds for common repair and maintenance. Where the account is not branded as a maintenance account evidence should be provided that the account has been set up by a registered property manager or at least two other people who are jointly authorised to carry out transactions on behalf of the other owners. A minimum of two signatories must be in place to operate the account on behalf of all other owners.

If a decision is made by the Council to pay a missing share, that payment will be confirmed in writing to the owners prior to works commencing. Payment of the missing share will subsequently be made directly to the maintenance account upon completion of the works and the submission of a satisfactory invoice for payment.

Approval or payment of a missing share does not place any burden, obligation or responsibility on Inverclyde Council to check, quantify, certify or guarantee works nor does it create any contractual arrangement between Inverclyde Council and the owners or their appointed agent or contractor other than to make payment on the confirmed terms. For clarity, Inverclyde Council will simply be making a payment which should otherwise have been made by an owner.

1. **Apportioning Costs**

Whilst owners are solely responsible for the upkeep of the individual and communal elements of flats or houses, certain parts of buildings can be the joint responsibility of all owners whose title deeds say they have a ‘common interest.’ In a tenement property this will typically include parts of the building such as the roof, walls, foundations, chimney heads and common close stairs.

The title deeds of the property will normally confirm the following details:

* + the shared responsibilities for the management and maintenance of common parts;
  + how decisions about management and maintenance should be taken; and
  + how costs are to be split amongst owners.

Copies of title deeds can be obtained from the Registers of Scotland at [www.ros.gov.uk](http://www.ros.gov.uk/), the solicitor who completed the conveyancing when the property was purchased or the lender who has security on the property. Where title deeds are viewed by co-owners to be unfair or out of date as they relate to old rateable values, guidance is available on how they can be changed. <http://www.gov.scot/Resource/Doc/76169/0019425.pdf>

Where title deeds do not confirm these details a default Tenement Management Scheme (TMS) will apply. The TMS provides a basic scheme for decision making and the division of costs.

The TMS can only be used where the title deeds are silent on matters, it cannot be used to ‘over rule’ existing burdens on the title deeds although it can be used in conjunction with the title deeds to fill any gaps in the deeds.

A list of building elements which are normally held in ‘common interest’ is noted below to aid owners in identifying their responsibilities, however it should be noted this list is neither exhaustive nor legally binding:

|  |  |
| --- | --- |
| 1 | Chimney stacks (excl. pots and cowls) |
| 2 | Chimney vents or flue structures |
| 3 | Roof coverings, ridges and flashings |
| 4 | Roof timbers |
| 5 | External walls |
| 6 | Mutual gable walls dividing buildings |
| 7 | Internal walls dividing flats |
| 8 | Close walls (only the half facing the close) |
| 9 | Lintels |
| 10 | Foundations |
| 11 | Structural beams in the external walls |
| 12 | Gutters |
| 13 | Downpipes |
| 14 | Stair windows |
| 15 | Bannisters in the close |
| 16 | Close stairs and access doors |
| 17 | Close decoration |
| 18 | Front fences and gates |
| 19 | Solum area |
| 20 | Back garden |
| 21 | Access paths |
| 22 | Bin stores |
| 23 | Stair lighting |
| 24 | Mains water supply pipes |

1. **Identifying & Costing Maintenance Works**

The Housing (Scotland) Act 2006 defines maintenance as: -

Repair and replacement, cleaning, painting and other routine work, gardening, and the reinstatement of part (but not most) of the premises. It does not include demolition, alteration or improvement, or any internal decoration of any part of premises which are not owned in common, unless reasonably incidental to any such repairs etc.

For clarity, Inverclyde Council does not consider gardening related works as eligible for a missing share.

Whilst the definition of maintenance works is set out in legislation, it can be difficult for owners to identify which works require to be carried out to their property, particularly if there is a problem such as water penetration.

Owners can engage appropriately qualified companies to provide quotes for the required maintenance works. Alternatively a building surveyor could be engaged to undertake an assessment of the property to identify the required maintenance and provide quotes for the required works. A building surveyor will also be able to assist owners with drawing up a maintenance plan which outlines future maintenance requirements.

1. **Contacting Owners**

Any application to the Council for a missing share requires evidence of attempts to contact the owner who is unable or unwilling to pay their share or who cannot be found. Ultimately all owners will require to be served with formal notice, by the majority of owners, which advises of the works required, their apportioned costs, how the works required and the costs were arrived at, the date monies are due to be paid to the maintenance account and a proposed start date for the works assuming that all shares are paid. However, formal notice need not be the initial method for contacting owners and it may be the case that existing goodwill and good neighbour relationships can be exercised to the advantage of all owners.

It is recognised that in some circumstances there can be problems in identifying owners, particularly where the property is empty and it is understood that the task of advising a number of owners of the need for works can be daunting. Owners can use the following guidance to identify and contact owners and assist in evidencing to the Council that the relevant conditions in applying for a missing share have been met.

## Identifying Owners

In the majority of properties it is likely that the owners are also the residents and making initial contact will require nothing more than knocking a door or hand delivering a short explanatory letter and recording that this has been done. However, there may be circumstances where the owner is not resident at the property and the initial contact requires to be made by a telephone call, posted letter, e-mail or other form of electronic message. Whichever method of contact is used it is essential that the majority owners keep a record of the contact and any response received as this will be a crucial part of the Council’s decision making process in whether or not to provide a missing share.

In a small number of cases it may be that ownership details for an individual property are not known or that there are no contact details for that owner. In these cases the obligation is on the majority owners who are applying for a missing share to prove to the Council that they have taken all relevant steps to identify and contact the owner. Noted below are some sources of information which can be used by other owners to identify and contact an absent owner:-

* + - Registers of Scotland – This registers holds ownership details for all residential property in Scotland as well as contact details for that owner (at the time of purchase) and any information on any outstanding mortgage or secured loan. There is a fee associated with searching the register, but the information sourced may be the simplest way to identify and contact an owner or may prove useful when combined with other enquiry routes. Further information can be found at [www.ros.gov.uk](http://www.ros.gov.uk/)
    - Electoral Register – The Electoral Register or Roll lists the name of everyone who has registered to vote at a property. The Register may hold information about the ownership of the property, particularly where the property is vacant. Information on the Electoral Register can be found on the Inverclyde Council website at [www.inverclyde.gov.uk](http://www.inverclyde.gov.uk/) There are also a range of online fee-based Electoral Roll searches which can be found online.
    - Landlord Register – The Landlord Register holds the details of landlords and any acting agents for all let property within a local authority area. There is a publicly searchable element of the register which will provide a contact details for either the owner or their agent. The search facility can be accessed at: <https://www.landlordregistrationscotland.gov.uk/Pages/PublicSearch.aspx>
    - Companies House – Companies House can be used as a potential source of information to find property owners where they are linked to a business. Companies House provides a range of information about companies directors, business accounts, contact details, mortgages, etc. and some of this may allow an owner or company to be identified and contacted or may prove useful when combined with other enquiry routes. Further information can be found at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk/)
    - The Insolvency Register – If it is known that the owner of the property has been declared, or has applied for, bankruptcy it may be appropriate to check the Insolvency Register. This register is maintained by the Accountant in Bankruptcy and can be accessed online free of charge via their website. The register is searchable by name, address or case number and will provide information on any current bankruptcy cases. This information may prove useful when combined with other enquiry routes. Further information can be found at roi.aib.gov.uk/ROI
    - People Finder Services – There are several types of people finder services available and these services use the services noted above plus several other sources of information, such as data purchased from credit companies, estate registers and social media, to attempt to identify property owners. There is normally a fee charged by the company for these services and further information can be found by submitting related phrases of reference to internet search engines.

## Contacting Owners

In any application for a missing share the majority of owners are required to provide evidence of the information which they made available to the non-participating owner and any responses received. A template letter for establishing initial contact with owners is set out at Appendix B and can be used and adapted to suit particular circumstances.

Making contact with a neighbour to discuss financial issues and issues of disrepair can be a daunting task and there are some simple steps which can be taken to ensure that the overall benefit of undertaking repairs is realised and that any current goodwill between neighbours is maintained.

The following paragraphs provide some basic guidance designed to assist owners in contacting neighbours and to ensure that the necessary evidence is obtained for any subsequent financial recovery action taken against a non-participating owner or for an application to the Council for a missing share.

When trying to organise maintenance repairs you may want to build up to the issue with your neighbours. Try to catch your neighbours on the stair or put up a poster near the close entrance with some details of the maintenance required and the need for all owners to meet to discuss the matter. You might find that some of your neighbours were already thinking of the need for the works. Sometimes a short informal note through a neighbour’s door can be enough to start discussion on the matter.

Where a flat is known to be tenanted you could ask the tenant to contact their landlord or agent or provide you with the landlord or agent’s details in order that they can be made aware of the required works. In some cases you may need to write a formal letter to resident owners, landlords or agents. You should aim to keep this letter factual and informative but should include a reasonable timescale for response. A template letter for establishing initial contact with owners is included with this guidance and can be used and adapted to suit particular circumstances.

The responses received to the discussion, notes, poster or letter can be varied and it may be the case that some owners don’t agree with the works required or don’t understand or accept their responsibilities. At all times contact should remain civil and where applicable should seek to build on any existing goodwill within neighbourly relationships. Copies of any formal letters and responses should be kept as these may form part of the evidence required for any application to the Council for a missing share.

Once initial contact has been made with all the owners and a response has been received from a majority of owners acknowledging a maintenance issue, it is good practice to organise an owners meeting. This meeting can be held in someone’s home or in a neutral venue such as the local community centre, church hall or library. Sufficient notice (at least 48hrs) of an owners meeting being organised should be given to all owners in writing. A written record of the meeting should be taken and this should include the details of attendees, the proposed works, any statements made by individual owners, the agreed next steps to be taken to progress repairs and the timescales for completion of these next steps. A copy of the record of the meeting should be provided to all owners as soon as possible irrespective of whether they have attended the meeting or not. Any subsequent actions taken as a result of the meeting, e.g. arranging a property survey, obtaining quotes, etc. should also be notified to all owners in writing, this notification should include dates, times and any other relevant information.

1. **Funding Maintenance Works**

Investing in work to keep property in a good state of repair is an excellent way to help maintain its value and desirability. The creation of an agreed maintenance plan can help to identify required works and provide owners with sufficient timescales for the securing of the funding required.

It is also understood that in many cases the funding of works may prove a considerable barrier for many owners. The section of the guide is intended to ensure that all owners are aware of, have considered and have exhausted all funding options prior to formally applying to the Council for a missing share.

The Housing (Scotland) Act 2006 states that “owners have primary responsibility for the maintenance of their property.” Our Scheme of Assistance sets out the advice & information, practical assistance and financial assistance available to home owners in Inverclyde. General repair grants do not form part of the assistance available from the Council.

These are 4 common routes for owners to fund maintenance works and these are;

1. the owners own capital savings or investments;
2. equity release via loans secured against the property;
3. unsecured loans; and
4. assistance from within the wider family unit.

Owners may have sufficient savings from which they can fund their share of works. This is perhaps the simplest and most straightforward funding route as the funding may be readily available or can be made available if sufficient notice is given. Owners releasing funding from their capital savings or investments are strongly advised to seek independent financial advice, particularly where there may be long-term financial implications for accessing savings or investments earlier than originally planned.

Equity release is a funding method in which the difference between the property value and outstanding debt secured against the property is turned into a cash sum for the owner to access. Re-mortgaging and taking out a secured loan is a popular form of equity release and can offer low interest rates due to the reduced risks to the lender. By securing the loan against the property the lender has a greater chance of recovering their funding if the owner defaults on repayment as they would be treated as a preferential creditor. Traditionally banks and building societies were the only source of equity release based products, however there are an increasing number of financial organisations who offer this type of product. As is the case with any financial product, owners are strongly advised to take independent financial advice before entering into any financial agreement or contract as there may be costs, fees and risks associated with re-mortgaging.

Unsecured loans are personal loans which are not secured against the property. These traditionally have higher interest rates than secured loans as the lender could be one of many creditors if the owner defaults on repayment.

Owners are advised to check the terms and conditions and interest rates of any loan product prior to acceptance as there are many products in the market place, some of which may not be suitable if the loan is intended to be repaid over a longer term. Owners should satisfy themselves that they understand the interest rate, can meet the monthly repayment charge and understand the total amount to be repaid. Credit Unions may be able to provide access to low cost loans and will often provide additional financial services which may be of assistance to owners. As is the case with any financial product, owners are strongly advised to take independent financial advice before entering into any financial agreement or contract.

In terms of assistance from within the wider family unit, it is often the case that owners view their home as their main asset which will provide for other family members in terms of accommodation or financial security for the future. With this in mind it is not unusual to find situations where other family members, who are perhaps not resident in the property, are willing to make a financial investment in the property to ensure that the lifespan and the value of the property is extended beyond its current terms.

## Additional Funding Options for Missing Shares

Where the majority of owners are applying to the Council in respect of a missing share they require to have had consideration of alternative funding options. Common alternative funding options are noted below for ease of reference. The reasons for rejection of these options will require to be explained with any formal application for a missing share.

* + 1. Agree to commission the repair and divide the bill between the participating owners;
    2. Agree to commission the repair and divide the bill between the participating owners and then send the non-participating owner a formal invoice requesting payment; and

Raise an action in the Sheriff Court against the non-participating owner for recovery of payment outstanding.

It may also be appropriate for the majority of owners to have a solicitor write to the non- participating owner which sets out that owner’s obligations, the additional costs incurred and the burden placed on a the title deeds, in respect of a repayment charge, when a missing share is paid by the Council.

It is often the case in tenemental properties, which include commercial properties that the commercial properties have a greater proportion of the costs to pay as set out in the title deeds. This can prove to be a considerable barrier to progressing works, however it is not an insurmountable barrier and title deeds can be amended to reflect an agreed new apportionment. Guidance on how to change title deeds can be found at the undernoted link; <http://www.gov.scot/Resource/Doc/76169/0019425.pdf>

In cases where 100% of the owners agree to a change in the title deeds then a solicitor should be engaged to draw up the new deed for certification by the Land Registry. If the majority (51% to 99%) agree to a change, the revised deed should be drawn up by the solicitor and submitted to the Lands Tribunal for consideration. Those against the change can lodge an objection for consideration by the tribunal prior to their decision making. If 25%-50% of the owners wish to make a change they should submit an application to the Lands Tribunal for consideration.

1. **Formal Notice to Owners**

As part of the process of applying for a missing share the owners must prepare a formal Notice which should then be given to all owners within the building. This Notice provides them with the following information:

* + a clear description of the repairs required;
  + the estimated cost of the repairs;
  + the individually apportioned shares and the relevant individual cost;
  + the date the share is required to be paid;
  + the details of the account where the share is to be paid to; and
  + the proposed works start date if all shares are paid

A template for this type of formal Notice and Record of Service is set out at Appendix C and can be adapted to suit individual circumstances. An application for a Missing Share can only be made after the formal Section 50 Notice has been given to all owners and the relevant amount has not been deposited in the maintenance account by the date requested.

An application form to apply for a Missing Share is set out an Appendix D. The application should be signed by the majority of owners and should include all the requested evidence. An incomplete application will be rejected.

1. **Organising and Paying for Repairs**

Owners can engage companies with the relevant skills to assess the requirement for maintenance and to provide quotes for the required maintenance works. Alternatively a building surveyor could be engaged to undertake an assessment of the property to identify the required maintenance and provide quotes for the required works. A building surveyor will also be able to assist owners with drawing up a maintenance plan which outlines future maintenance requirements.

Once repairs have been identified and a majority of owners have agreed to the works proceeding, the issue of finance should be addressed promptly.

In the majority of cases it will likely be appropriate to obtain several comparable quotes to ensure that best value is being achieved in the management of works and funds. Obtaining quotes will also give owners an idea of the cost of their share in advance of any contract being entered into and will allow the majority of owners to provide detailed and relevant information to any non-participating owner.

If works are large in scale it may be appropriate to appoint a professional project manager to undertake project management which may involve appointing a design team, ascertaining what works are required preparation of a specification of works, assessment of tender returns applying for any relevant statutory permissions and contractual commissioning of an appropriate contractor. “Overseeing” and measuring works on site until completion of the scheme

The majority group of owners will require to evidence that all elements of the checklist at Appendix A are satisfied before making an application to Inverclyde Council for a missing share.

Following application, if a decision is made by the Council to pay a missing share, the agreement to make payment will be confirmed in writing to all owners prior to works commencing. This written confirmation will act as ‘security’ for any contractor, project manager or factor who wishes to have full funding in place prior to commencing works. Upon completion of works and submission of a satisfactory request for payment, usually in the form of an appropriate invoice, payment of the sum which represents the cost of a share which remains unpaid by an owner for communal maintenance will be made directly to the maintenance account by the Council.

Irrespective of how the tradesman is appointed a contract will exist between the owners and the contractor carrying out the works. It is the responsibility of the owners and/or their representative to carry out adequate checks on the standard of the works undertaken and to satisfy themselves that works have been completed to an appropriate standard. Once works are at an appropriate stage for payment owners should seek to make payment to the contractor by cheque or bank transfer from the Maintenance Account. Depending upon the scale of the works it may be appropriate for an agreed percentage of the costs to be held in retention by the

owners during an agreed defects liability period. Any such retention should be clearly accounted for and held in the maintenance account until due to be paid.

Approval or payment of a missing share does not place any burden, obligation or responsibility on Inverclyde Council to check, quantify, certify or guarantee works nor does it create any contractual arrangement between Inverclyde Council and the owners or their appointed agent or contractor other than to make payment on the confirmed terms. For clarity, Inverclyde Council will simply be making a payment which should otherwise have been made by an owner.

1. **Ongoing Property Maintenance**

Owners are encouraged to ensure that their properties are maintained in good condition, that residents are not affected by defects and that property values are retained. One way for owners to achieve this is to develop a maintenance plan which sets out a planned programme of work which will keep a property at a reasonable standard. A sample Maintenance Plan is set out at Appendix E and this can be used as a starting point for owners to develop their own.

Owners can at any time develop an agreed maintenance plan which covers an agreed period and agreed priority of works. Having a maintenance plan for a property illustrates a degree of planning and acceptance of maintenance responsibilities. A maintenance plan requires to be submitted along with the other evidence required in support of an application for a missing share.

Where an application for a missing share has been received and there is no maintenance plan in place, it is within the Council’s powers to serve a maintenance order on all properties which obliges the owners to develop a joint maintenance plan covering a period of up to 5 years. The service of a maintenance order will be recorded against the title of the properties and the subsequent maintenance plan will be monitored by the Council to ensure that owners progress works within a satisfactory timescale.

Clearly, there is a risk that formally involving the Council in repair issues can result in higher costs for all owners. Owners are therefore encouraged to develop their own maintenance plan, outwith the Council’s enforcement scenario. As a minimum, owners should ensure that their plan covers the following elements;

* + Provides an accurate description of the maintenance required;
  + Confirms what steps are to be taken to achieve this maintenance;
  + States the timescales for each of the steps;
  + Provides an estimated cost for the maintenance works; and
  + Confirms the apportionment of costs (based on the title deeds or tenancy management scheme)

There are regular works required to buildings to keep them in a state of good repair and these works (e.g. gutter cleaning, external painting, etc.) should be included in any maintenance plan. Owners developing a maintenance plan may wish to have their building surveyed to ensure that they have a firm starting point for prioritising future maintenance.