

TENEMENTS (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Repairs: Costs and Access

Section 14 – Former owner’s right to recover costs

74. This section will allow the former owners of flats in a tenement to recover certain costs owed to them under provisions of the Act or rules of the Tenement Management Scheme.
75. Rule 8.3 of the Tenement Management Scheme enables “any owner” to enforce any obligation arising from a scheme decision. This may include cases where the obligation is an obligation to contribute towards payment and an owner seeks to recover shares of a scheme cost from the other owners. A former owner may still be seeking to recover sums due arising from the operation of the following: rule 4, which deals with liability and apportionment of scheme costs, rule 5, dealing with special cases of scheme costs, and rule 7, concerned with emergency work. In such cases, an owner will be able to recover any money owed to him or her even if he or she has ceased to be an owner of a flat.
76. Under *section 10* of the Act an owner is entitled to recover a share of the cost of maintenance carried out by virtue of *section 8* as if the maintenance had been carried out by virtue of the management scheme in question. Without the provisions of *section 14*, *section 10* would limit the right of recovery to a current owner and so a former owner would lose out. Similarly an owner would lose his right to recovery when selling his flat under *section 17(9)* which allows an owner to instruct works and recover the costs of them, where there has been a failure to reinstate his property to or through which access has been taken. This does not seem fair and *section 14* therefore provides that a former owner should also be able to recover those costs.
77. This section only deals with costs arising under the Tenement Management Scheme or the Act and not under burdens in title deeds as section 8(2)(c) of the Title Conditions Act already makes provision for these cases.