



RIGHTS & RESPONSIBILITIES

Chapter 2

Chapter 2

**THE RIGHTS AND RESPONSIBILITIES OF
BUILDING OWNERS**

2.1 Legal Provisions

2.1.1 Common Law

Under the Common Law, landlords or building owners have duties of care to their properties. Such duties normally include the maintenance and repair of the structures and finishes of the building as well as the facilities therein. The objective is to secure a safe and habitable environment.

2.1.2 Buildings Ordinance (Chapter 123)

Private buildings and private building works in Hong Kong come within the purview of the Buildings Ordinance (BO). It ensures that minimum safety and health standards are maintained in the design, construction, use and safety maintenance of buildings.

Through registration systems under the BO, the Building Authority (BA) regulates the standards of key personnel in building construction works, they are "Authorized Persons" (AP) who may be architects, engineers or surveyors, "Registered Structural Engineers" (RSE) and Registered (General Building or Specialist) Contractors (RC).

A building owner (or any person) who intends to carry out building works, whether or not resulting in a new building, should employ an AP and a RSE to submit proposals on his behalf to the BA for approval. Building works should be executed by the RC. Details of the registers are available from the web site of the Buildings Department (BD).

Matters involving the structural and fire safety of existing private buildings and their associated features also come under the jurisdiction of the BA. Statutory orders may be served on owners to rectify unsafe or undesirable situations such as dilapidation, drainage nuisance, dangerous slopes or earth-retaining structures, unauthorized building works, fire hazards and other nuisances. Such orders may also require owners to carry out investigation for an assessment of the required remedial measures.

2.1 Legal Provisions

2.1.3 Building Management Ordinance (Chapter 344)

The objectives of the Building Management Ordinance (BMO) are to facilitate the incorporation of owners of flats in buildings or groups of buildings, to provide for the management of buildings or groups of buildings and for matters incidental thereto or connected therewith.

In addition, the Secretary for Home Affairs (SHA) is empowered by the Ordinance to impose mandatory management on buildings that are not managed or not properly managed thus posing danger or risk of danger to the occupiers or owners.

2.1.4 Deed of Mutual Covenant

The Deed of Mutual Covenant (DMC) is a legal document binding the building owners registered in the Land Registry. It clearly sets out the rights, interests and obligations of the owners, occupiers, tenants and property management agents in respect of the control, administration, maintenance and management of private properties, common parts and facilities of buildings.

DMC usually covers the following information:

- lot number of the land where the building or buildings are sited;
- number of undivided shares and management shares of individual units as well as the total number of shares of the property;
- ownership of certain parts of the building (e.g. the roof and flat roof) that are reserved for owners' use and other exercisable rights (e.g. the installation of chimneys and signboards);
- the extent of common parts;
- rights and responsibilities of individual owners;
- appointment, powers and duties of property management agents;
- contributions of individual owners to the management expenses; and
- procedures and rules governing the formation of Owners' Committee.

Building owners should be conversant with the DMC of their buildings, and perform the duties and exercise their rights accordingly.

Copies of the DMC may be obtained from solicitors in the process of property transactions or from the Land Registry by paying a fee.

2.1 Legal Provisions

2.1.5 Other Relevant Legal Documents

Apart from the above, there are provisions in other legislations which contain specific requirements and restrictions relating to building maintenance and management. A more detailed summary of the related Ordinances and Codes of Practice is included in Appendix 3 with some of them quoted below for ease of reference:

Landlord and Tenant (Consolidation) Ordinance (Chapter 7) covers the rights and responsibilities between the landlords and the tenants.

Fire Services Ordinance (Chapter 95) governs the installation of fire fighting equipment in buildings, and the maintenance of them.

Waterworks Ordinance (Chapter 102) governs the water supply work for consumption purposes and for fire services installations in buildings.

Water Pollution Control Ordinance (Chapter 358) governs the achievement and maintenance of water quality.

Electricity Ordinance (Chapter 406) governs the electrical installations in buildings, and the requirements on periodic inspection and certification.

Gas Safety Ordinance (Chapter 51) governs the gas installations and use inside buildings.

Lifts and Escalators (Safety) Ordinance (Chapter 327) governs the design, construction, testing and maintenance of lifts and escalators.

Fire Safety (Commercial Premises) Ordinance (Chapter 502) is to provide better protection from the risk of fire for occupiers and users of certain kinds of commercial premises. It also covers the statutory requirements on certain kinds of old commercial premises to improve and upgrade the fire fighting equipment and installations.

Occupiers Liability Ordinance (Chapter 314) governs the obligations of occupiers of properties.

2.1 Legal Provisions

2.1.5 Other Relevant Legal Documents (continues)

Summary Offences Ordinance (Chapter 228) governs the offences against the public's good order such as obstruction of public places and objects dropped from buildings, etc.

Public Health and Municipal Services Ordinance (Chapter 132) governs the public hygiene and municipal services including public sewers, public drains, litter or waste, etc.

Prevention of Bribery Ordinance (Chapter 201) governs the offer of an advantage to or its acceptance by an agent in relation to building maintenance and management work.

The above list is not exhaustive. The legislations and this Guidebook can be purchased from the Government Publications Centre at Ground Floor, Low Block, Queensway Government Offices, 66 Queensway, Hong Kong, or downloaded from the Bilingual Laws Information System at Legal Department's Website. (Web Site : www.justice.gov.hk)

2.2 Rights of Building Owners

Usually, a person acquires the title of a property together with an undivided share of the land on which the property stands. Being secured by Deed of Mutual Covenant (DMC) or Building Management Ordinance (BMO), an owner may exercise the following rights:

- exclusive possession, use, occupation and free enjoyment of the property under his title and all benefits derived from it;
- freely sell, assign, let or permit the use by others his shares together with the rights and interests in the building;
- use freely, with other owners, the common parts of the building such as staircases, corridors, access, lifts, etc., and common facilities such as fire services installations, water supply and drainage, electricity supply, security system, recreational provisions, etc.; and
- vote in respect of management decisions.

2.3 Responsibilities of Building Owners

Building owners shall assume full responsibility to maintain and manage their own private properties and common parts jointly. Main areas of responsibilities include:

- pay his share of management fee and contributions to maintenance and management funds in accordance with the clauses in the Deed of Mutual Covenant (DMC);
- maintain the structural elements of the building, common parts and facilities as well as his own private property;
- pay tax and rates of the property under his title; and
- comply with the "House Rules" attached to the DMC or formulated by the Owners' Corporation (OC), Owners' Committee or property manager in accordance with the DMC.

2.4 General Advice for Maintenance & Management of Common Areas

It is always advisable for property owners to establish Owners' Corporation (OC), Owners' Committee or appoint a property manager in managing or maintaining the common parts of a building.

2.4.1 Frequent Patrol & Inspection

Effective building management should include frequent patrol and surveillance of the common parts of buildings such as staircases, lobbies, roof top, private access roads or lanes and most importantly, the areas that are not frequently used such as staircase leading to back lanes and other inconspicuous areas. Care must be exercised to prevent any trespasses, misuses, damages of essential installations or unauthorized extensions by individual owners or outsiders.

Regular inspection is necessary to reveal early symptoms of deterioration of the building fabric, service components and facilities, allowing more response time to plan and carry out rectifications. Periodic testing of vital equipment or installations is essential to ensure their proper performance especially in case of emergencies. Inspection and maintenance programs could be drawn up according to guidelines given in this Guidebook or professional advice. Timely maintenance and repair not only prevent sudden collapse of structures or finishes or breaking down of services which may lead to disastrous consequences but also can reduce the repair costs.

2.4 General Advice for Maintenance & Management of Common Areas

2.4.2 Records of Buildings

A complete set of building records is essential for effective maintenance and management and should therefore be kept by the OC, Owners' Committee or property manager. Examples of such records are:

- Building, structural, drainage, site formation, alterations and additions plans approved by the Building Authority (BA); documents associated with the approval such as calculations, undertakings, certificates, permits, etc.; and records on any change of use of certain parts of the building accepted by the BA
- Plumbing drawings accepted by the Water Supplies Department
- Fire Services Installation plans accepted by the Fire Services Department
- Layout plan for hidden utilities such as electricity cables, gas pipes, telephone lines, etc.
- History of maintenance including records of installations and replacements, certifications and statutory forms
- Testing, commissioning and operation manuals for building services, mechanical components and installations
- Certification for the performance of specific materials and components as well as warranties from specialist contractors or suppliers (e.g. on waterproofing materials and its installation work)
- Deed of Mutual Covenant

Developers, professionals or design consultants of the buildings should keep most, if not all of the above records. OC, Owners' Committee or the property manager should request for copies of such records to facilitate their future operation.

For buildings completed over a considerable period of time, such records might not be available from the parties involved with the development. OC, Owners' Committee or the property manager may approach the relevant Government departments for such records. Drawings approved by the BA after 1945 may be available from the BD for viewing and copying.

BD also keeps records of Occupation Permits issued to private buildings. Though the permit generally describes the subject building and its permitted uses, the latest approved building plans should always be referred to for the approved use of specific parts of a building. Obtaining copies of the approved plans and occupation permits requires payment of fees.