



STATUTORY INSTRUMENTS.

S.I. No. 679 of 2011



HOUSING (TENANT PURCHASE OF APARTMENTS) REGULATIONS
2011

(Prn. A11/2378)

HOUSING (TENANT PURCHASE OF APARTMENTS) REGULATIONS
2011

I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by sections 5 and 58(4) of the Housing Act 1966 (No. 21 of 1966) and sections 3, 32(6), 54(6), 67(12) and 77 of the Housing (Miscellaneous Provisions) Act 2009 (No. 22 of 2009), as adapted by the Environment, Heritage and Local Government (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 193 of 2011), hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the Housing (Tenant Purchase of Apartments) Regulations 2011.

Commencement

2. These Regulations come into operation on 1 January 2012.

Interpretation

3. (1) In these Regulations—

“the Act of 2009” means the Housing (Miscellaneous Provisions) Act 2009 (No. 22 of 2009); and

“the Act of 2011” means the Multi-Unit Developments Act 2011 (No. 2 of 2011).

(2) In these Regulations, except where the context requires otherwise in Regulations 6 and 19 and Schedules 1 and 2, a reference to “tenant” shall, in the case of an apartment where there are 2 or more tenants, be taken to be a reference to “tenants”.

Part 2

TENANT PLEBISCITE

Appointment of returning officer

4. Where a housing authority adopts a section 53 proposal in respect of an apartment complex, the manager of that authority shall appoint forthwith an employee of the authority to be the returning officer for the purposes of the tenant plebiscite in that complex.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th December, 2011.*

Returning officer

5. The returning officer shall be responsible for the proper administration of the tenant plebiscite.

Electoral roll

6. (1) The returning officer shall—

- (a) compile a list of the name of the tenant of each apartment in the apartment complex the subject of the section 53 proposal, including, in cases where there are 2 or more tenants of an apartment, the name of each such tenant, and
- (b) having regard to section 54(4) of the Act of 2009, ascertain the total number of tenants entitled to vote in the tenant plebiscite.

(2) The list prepared under paragraph (1) shall constitute the electoral roll for the tenant plebiscite.

- (3) (a) Subject to subparagraph (b), each tenant in the electoral roll shall be numbered consecutively according to either the number or the location of the apartment that he or she occupies in the apartment complex, or a combination of both.
- (b) in the case of an apartment where there are 2 or more tenants, the names of each such tenant shall be listed together and assigned a single number in the electoral roll.

Last day and time for receipt of ballot papers

7. Subject to section 52(1)(b)(i) of the Act of 2009, the returning officer shall fix the last day and hour for receiving completed ballot papers.

Ballot paper

8. (1) The ballot paper for the tenant plebiscite shall be in the form set out in Schedule 1.

(2) Every ballot paper shall have a counterfoil attached to it.

Issue of ballot papers

9. (1) The returning officer shall issue ballot papers to tenants as soon as practicable after fixing the last day and hour for receiving completed ballot papers.

(2) Every ballot paper shall, at the time of its issue be marked with an official mark, which shall be embossed or perforated so as to be visible on both sides of the paper, and the number, name and address on the electoral roll of the tenant to whom it is being issued shall be entered on the back of the ballot paper.

(3) The number on the electoral roll of the tenant to whom a ballot paper is issued shall be entered on the counterfoil for that ballot paper.

(4) A mark shall be placed in a copy of the electoral roll opposite the number of the tenant to denote that the particulars referred to in paragraph (2) have been entered on the ballot paper and that the number on the electoral roll of the tenant has been entered on the counterfoil.

(5) The counterfoil shall be detached from the ballot paper before it is issued and shall be retained by the returning officer.

Posting, etc., of ballot papers

10. (1) In issuing ballot papers to tenants, the returning officer shall, in addition to the documents referred to in section 54(5) of the Act of 2009, issue with each such ballot paper a postage-prepaid envelope addressed to the returning officer.

(2) The returning officer shall post the ballot papers in the presence of the Cathaoirleach or Leas-Chathaoirleach of the local authority concerned.

(3) The posting of ballot papers may be attended by members of the local authority other than those referred to in paragraph (2) and by such other persons as the returning officer may authorise.

(4) Where a posted envelope that contained the documents referred to in paragraph (1) is, before the closing day for the receipt of completed ballot papers, returned to the returning officer as not having been delivered to the relevant tenant, the returning officer may readdress the envelope and send it by post to that tenant.

Ballot box

11. The returning officer shall provide a ballot box for the reception of ballot papers returned by tenants.

Receipt of ballot paper envelopes

12. The returning officer shall, immediately on receipt of postage-prepaid envelopes, place them unopened in the ballot box provided in accordance with Regulation 11.

Receipt of envelopes

13. If the returning officer receives, before the close of the ballot, an envelope other than a postage-prepaid envelope and finds therein a ballot paper which would have been appropriate to send to him or her in a postage-prepaid envelope, he or she shall—

- (a) securely close the envelope,
- (b) endorse thereon, and sign, a statement that he or she has closed the envelope with the contents intact,
- (c) place the closed envelope in the ballot box that he or she has provided, and
- (d) thereafter treat the envelope as a postage-prepaid envelope.

Ballot papers received late

14. Any ballot paper received by the returning officer after the hour on the last day fixed for receipt thereof shall not be placed in the ballot box.

Attendance at count proceedings

15. The following persons may be present at the opening of the ballot box, the scrutiny of the ballot papers and the counting of the votes:

- (a) the returning officer and his or her assistants and clerks,
- (b) members of the local authority concerned,
- (c) tenants of the apartment complex in respect of which the plebiscite is being held and members of their households, and
- (d) such other persons as the returning officer may authorise.

Opening of ballot box

16. The returning officer shall open the ballot box as soon as practicable after the hour on the last day fixed for the receipt of completed ballot papers.

Opening of envelopes

17. When the ballot box has been opened, the returning officer shall take all the envelopes out of the ballot box, open the envelopes and count and note the number of ballot papers received.

Treatment of ballot papers

18. For the purposes of—

- (a) scrutinising ballot papers under—
 - (i) Regulation 20 in order to discover any papers liable to be rejected as invalid for the reasons set out in paragraphs (f) and (g) of Regulation 19, and
 - (ii) Regulation 23, and
- (b) counting the votes under Regulation 25,

the returning officer shall cause the ballot papers to be kept face upwards and shall take due precautions to prevent any person from seeing the details printed or otherwise entered on the backs of the said papers.

Invalid ballot papers

19. Any ballot paper—

- (a) which does not bear the official mark, or
- (b) on which the details do not correspond with the details on the relevant entry on the electoral roll, or
- (c) which has not been signed by the tenant concerned, or

- (d) which has been signed by a person other than the tenant concerned, or
- (e) in the case of an apartment where there are 2 or more tenants, the ballot paper has not been signed by a majority of the tenants of the apartment, or
- (f) on the front of which the mark “x” or any other mark indicating a preference is not placed at all, or
- (g) on the front of which anything is written or marked which, in the opinion of the returning officer, is calculated to identify the voter,

shall be invalid.

Scrutiny of ballot papers

20. The returning officer shall cause the ballot papers to be scrutinised for the purpose of discovering any papers liable to be rejected as invalid.

Treatment of invalid ballot papers

21. The returning officer shall—

- (a) endorse the word “rejected” on any ballot paper which is invalid,
- (b) prepare a statement showing the number of ballot papers rejected for each reason set out in Regulation 19, and
- (c) set aside the ballot papers rejected as invalid.

Invalid preferences

22. (1) In the case of a ballot paper not rejected as invalid under Regulation 19 and subject to paragraph (2)—

- (a) a preference—
 - (i) indicated by a mark that is neither the mark “x” nor any other mark which, in the opinion of the returning officer, clearly indicates a preference, or
 - (ii) indicated by the mark “x” or any other mark which, in the opinion of the returning officer, clearly indicates a preference, but which is not so placed as to indicate a “Yes” or a “No” answer to the question concerned, or
- (b) preferences that indicate a “Yes” and a “No” answer to the same question,

shall be invalid.

(2) A preference shall not be invalid by reason only of its bearing the figure “1” or the word “one” or any other mark which, in the opinion of the returning officer, clearly indicates a “Yes” or “No” answer to the question concerned.

(3) For the avoidance of doubt, a preference indicating a “Yes” or “No” answer to a question on the ballot paper shall not be invalid by reason only that a preference in respect of the other question on the ballot paper is invalid.

(4) In the case of a ballot paper not rejected as invalid under Regulation 19, an instance where no mark indicating a preference is recorded at all shall be deemed to be an invalid preference.

Scrutiny of valid ballot papers

23. The returning officer shall cause the ballot papers not set aside under Regulation 21(c) to be scrutinised for the purpose of discovering any preferences that are liable to be rejected as invalid.

Treatment of invalid preferences

24. (1) The returning officer shall endorse the words “invalid” on the part of the ballot paper relating to the question in respect of which an invalid preference is indicated and, separately for each question, shall prepare a statement showing the total number of preferences that are rejected as invalid under each of the following provisions of Regulation 22:

(a) clauses (i) and (ii) of subparagraph (1)(a),

(b) subparagraph 1(b), and

(c) paragraph (4).

(2) Preferences on a ballot paper that indicate a “Yes” and a “No” answer to the same question shall be deemed to be a single invalid preference for the purpose of preparing the statement under paragraph (1).

Counting of votes

25. Disregarding any preferences rejected as invalid, the returning officer shall—

(a) scrutinise the ballot papers not set aside under Regulation 21(c), and

(b) separately in respect of each question on the ballot paper, count and note the number of preferences indicating a “Yes” answer and the number of preferences indicating a “No” answer and ascertain the total number of valid preferences recorded by voters.

Declaration of result

26. The returning officer shall declare the result of the tenant plebiscite in the form set out in Schedule 2.

Publication of result

27. The returning officer shall prepare the result of the tenant plebiscite and publish it on the Internet and send a copy to each tenant entered on the electoral roll.

Treatment of election papers

28. (1) The returning officer shall take all proper precautions for the security of the electoral roll, ballot papers and other documents relating to the plebiscite.

(2) On expiration of the period of 6 months from the date of counting of the votes at the plebiscite, the returning officer shall cause the ballot papers and other documents (other than the electoral roll) relating to the plebiscite to be destroyed.

Secrecy of the voting

29. Every person attending the proceedings in connection with the issue, receipt, scrutiny or counting of ballot papers and votes shall maintain and aid in maintaining the secrecy of the voting.

Part 3

PROVISIONS RELATING TO TENANT PURCHASERS

Minimum tenancy period

30. (1) The minimum period for which a person must be a tenant of a local authority apartment before applying to purchase an apartment under Part 4 of the 2009 Act is one year.

(2) In the case of joint tenants, one of them must fulfil the requirement in paragraph (1).

Purchase application

31. At the time of applying to purchase an apartment under Part 4 of the Act of 2009, a tenant shall provide the following information to the housing authority:

- (a) an indication of whether or not he or she is willing, following purchase of the apartment, to serve as a director of the management company for the apartment complex from time to time,
- (b) updated information in relation to his or her income and that of his or her spouse or civil partner,
- (c) the intended source of funding for the purchase money in respect of the apartment;
- (d) court orders made in respect of household members under sections 3, 3A or 4 of the Housing (Miscellaneous Provisions) Act 1997 (No. 21 of 1997), section 117 of the Criminal Justice Act 2006 (No. 26 of 2006), or section 257F of the Children Act 2001 (No. 24 of 2001),
- (e) the date and nature of any criminal convictions, or criminal charges pending, in the case of household members; and
- (f) any other information, including updated information, required by the housing authority for the purposes of the purchase application or the

exercise of the authority's functions under section 14 of the Housing (Miscellaneous Provisions) Act 1997.

Provision of additional information

32. A tenant shall, within 4 weeks of being requested to do so by the housing authority concerned, provide to that authority additional information, including documents and other particulars, sought for the purpose of verifying information provided by the tenant in connection with an application to purchase.

Notice about offences

33. An application form for purchase of an apartment from a housing authority shall include the following statement:

“Section 32(7) of the Housing (Miscellaneous Provisions) Act 2009 provides that it is an offence, punishable on conviction by a maximum fine of €2,000, for a person to knowingly provide false or misleading information or documents or to knowingly conceal any material fact in relation to the purchase of an apartment under Part 4 of the 2009 Act. Section 32(8) of the 2009 Act provides that a housing authority may recover from a person convicted of an offence under section 32(7) any higher expenditure that it incurred on the sale of the apartment due to reliance on false, misleading or undisclosed information.”

Purchase price

34. The purchase price for an apartment shall be determined as the greater of—

- (a) the price for which the apartment might reasonably be expected to be sold, on the open market, on the date of sale, in its existing state of repair and condition and not subject to the conditions provided for in paragraphs (a), (b) and (c) of section 64(5) of the Act of 2009 or to a charging order, or
- (b) 50% of the housing authority's estimate of the cost of providing, in accordance with prevailing national building standards and design policies for local authority housing, an apartment designed to accommodate a household in the same class that the apartment being purchased was designed for and located in a complex with the same numbers and classes of apartments as the designated apartment complex and provided on the same site, which estimate comprises the cost of building the apartment and the apportioned cost of acquiring the site of the complex at a current date, clearing and developing the site, providing the common areas, structures, works and services in the complex, and legal and other professional fees.

Purchase money and minimum charging period

35. Where a tenant's income is less than or equal to €20,000, the purchase money for the apartment shall be determined by the housing authority as the

monetary value of 40% of the purchase price for the apartment and the minimum charged period shall be 30 years from the date of the apartment assignment order.

36. Where a tenant's income is within the range of €20,001 to €29,999, the purchase money for the apartment shall be determined by the housing authority as the monetary value of 50% of the purchase price for the apartment and the minimum charged period shall be 25 years from the date of the apartment assignment order.

37. Where a tenant's income is equal to or in excess of €30,000, the purchase money for the apartment shall be determined by the housing authority as the monetary value of 60% of the purchase price for the apartment and the minimum charged period shall be 20 years from the date of the apartment assignment order.

Deposit

38. The amount of the deposit to be paid by a tenant in respect of the purchase of an apartment is 5% of the purchase money for the apartment.

Part 4

MISCELLANEOUS PROVISIONS

Class of apartment not for sale

39. Apartments that have been specifically designed for occupation by one or more than one elderly person are excluded from sale under Part 4 of the Act of 2009.

Term of tenancy agreement

40. (1) Pursuant to section 58(4)(b) of the Principal Act and for the purpose of securing the proper and efficient management of dwellings let by local authorities to which section 23 of the Act of 2011 applies, it shall be a term of the tenancy agreement in every such dwelling that the letting is subject to the observance by the tenant and all other persons occupying the property (including their licensees, servants or agents) of—

- (a) the conditions and covenants in the title documents relating to the use and enjoyment of the property, and
- (b) house rules made by the management company under the said section 23.

(2) An existing tenancy agreement may be amended from time to time for the purposes of paragraph (1) in the following manner, that is to say:

- (a) the housing authority shall, in a statement that is sealed with the authority's seal, set out-

- (i) the term to be incorporated in the existing tenancy agreement, which term shall summarise the particular covenants and conditions and specify the house rules to which the term applies, and
- (ii) where appropriate, the term in the existing agreement being replaced by the term referred to in clause (i);
- (b) the tenant shall sign the statement to signify his or her agreement to the incorporation of the term into the tenancy agreement; and
- (c) the amendment of the tenancy agreement shall come into force on the first day of the second month following the date on which the tenant signs the statement.

Determination of apartment floor area

41. Prior to the making of the apartment complex transfer order in respect of a designated apartment complex, the housing authority shall determine the floor area of each apartment in the complex by measuring the area inside the finished outer walls of the apartment, including all internal walls, partitions, and chimney breasts, and any balcony or open area forming part of the apartment and shall notify the management company of the floor areas so determined.

Expenditure funded from apartment complex service charge

42. Subject to section 23(11) of the Act of 2011, expenditure incurred by a management company on the making and enforcement of house rules under the said section 23 may be funded from the apartment complex service charge.

Payment into apartment complex support fund

43. The amount that a housing authority shall pay into the apartment complex support fund on its establishment is 5% of the sum of the estimated purchase price (determined in accordance with Regulation 34) of each apartment in the designated apartment complex (including community apartments and any apartments sold to tenants under section 90 of the Principal Act), subject to a maximum payment into the fund of—

- (a) €200,000 for a complex comprising a maximum of 20 apartments,
- (b) €300,000 for a complex comprising 21 to 39 apartments,
- (c) €400,000 for a complex comprising 40 to 59 apartments, or
- (d) €500,000 for a complex comprising 60 or more apartments.

Qualifications of valuers

44. A person who—

- (a) holds an auctioneer's licence or a house agent's licence under the Auctioneers and House Agents Act 1947 (No. 10 of 1947), and
- (b) has knowledge of and experience in the valuation of dwellings in a particular area,

is suitably qualified to determine the current market value or market value, as the case may be, of an apartment in that area, for the purposes of Part 4 of the Act of 2009.

SCHEDULE 1
FORM OF BALLOT PAPER

(Front of Paper)¹

TENANT PLEBISCITE ON PROPOSED DESIGNATION OF ...²
APARTMENT COMPLEX FOR SALE OF APARTMENTS TO TENANTS

BALLOT PAPER

...³ has adopted a section 53 proposal, under the Housing (Miscellaneous Provisions) Act 2009, to designate ...² apartment complex for the purpose of making the apartments owned by the authority in the complex available for sale to tenants in accordance with Part 4 of the 2009 Act.

Under section 54 of the 2009 Act, the housing authority is required to hold a plebiscite in respect of the proposal.

QUESTION 1

Are you in favour of the proposal by ...³ to designate the ...² apartment complex for the purpose of making the apartments owned by the authority in the complex available for sale to their tenants in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2009?

If you support the housing authority's proposal, please place the mark "x" in the box opposite the word "YES" below.

If you do not support the housing authority's proposal, please place the mark "x" in the box opposite the word "NO" below.

YES	
NO	

QUESTION 2

If designation proceeds and you purchase your apartment in the apartment complex, are you willing to serve as a director of the management company for the complex?

If you are willing to serve, please place the mark "x" in the box opposite the word "YES" below.

¹This text should not appear on the ballot paper.

²Insert name of apartment complex

³Insert name of housing authority.

If you are not willing to serve, please place the mark “x” in the box opposite the word “NO” below.

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

In order for this vote to be counted in the plebiscite, the tenant(s) must sign the back of the ballot paper

This ballot paper should be returned so as to reach the address on the enclosed envelope before ...⁴ on ...⁵.

(Back of Paper)¹

Tenant Number on electoral roll.....⁶

Tenant(s) Name(s) and Apartment Number: ⁶

Signature of Tenant(s) [See note below]

Apartment Number

Date

Note

In the case of an apartment where there are 2 or more tenants, section 54(4) of the Housing (Miscellaneous Provisions) Act 2009 provides that such tenants shall be considered as one tenant for the purposes of voting in the tenant plebiscite. The tenants concerned are not entitled to vote in the plebiscite unless a majority of them concurs, and their vote shall be disregarded in the plebiscite unless it is signed by a majority of such tenants. Thus, if there are 2 joint tenants of an apartment, both must sign the ballot paper in order for their vote to be counted at the plebiscite.

⁴Insert last hour for receiving completed ballot papers.

⁵Insert last date for receiving completed ballot papers.

⁶Details to be inserted before ballot paper issues.

SCHEDULE 2

FORM OF DECLARATION OF RESULT OF TENANT PLEBISCITE

DECLARATION OF RESULT OF TENANT PLEBISCITE

In accordance with section 54 of the Housing (Miscellaneous Provisions) Act 2009, I have conducted a tenant plebiscite in the⁷ apartment complex in respect of⁸'s proposal, under section 53 of the Act, to designate the complex for the purpose of making the apartments owned by the authority in the complex available for sale to tenants under Part 4 of the 2009 Act.

The plebiscite asked each tenant in the apartment complex to answer 2 questions.

Question 1 was “Are you in favour of the proposal by⁸ to designate the⁷ apartment complex for the purpose of making the apartments owned by the authority in the complex available for sale to their tenants in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2009?”.

Question 2 was “If designation proceeds and you purchase your apartment in the apartment complex, are you willing to serve as a director of the management company for the complex?”

In accordance with section 54(4) of the 2009 Act, where there are 2 or more tenants of an apartment, the tenants are entitled to one vote only in the plebiscite.

The total number of tenants entitled to vote at the plebiscite was⁹.

I declare the result of the tenant plebiscite as follows—

A total of⁹ ballot papers were returned at the plebiscite.⁹ ballot papers were rejected as invalid. The total number of valid ballot papers was⁹.

Question 1

The number of invalid preferences recorded in respect of Question 1 was⁹.

The number of votes in favour of the designation of the apartment complex was⁹.

The number of votes against the designation of the apartment complex was⁹.

The number of votes in favour of the designation of the apartment complex [is less than] or [equals] or [exceeds]¹⁰ ...¹¹, which is the minimum number of votes

⁷Insert name of apartment complex.

⁸Insert name of housing authority.

⁹Insert number.

¹⁰Delete underlined text and text in square brackets, as appropriate.

¹¹Insert the minimum number of votes required to be in favour of designation of the apartment complex, calculated under section 55(2)(a) of the Act of 2009.

required by law in the case of an apartment complex of this size. Thus, the condition relating to the plebiscite result set down in section 55(2)(a) of the Housing (Miscellaneous Provisions) Act 2009 [is] or [is not]¹⁰ satisfied.

Question 2

The number of invalid preferences recorded in respect of Question 2 was⁹.

The number of voters who indicated that, if designation proceeds and they purchase their apartments, they are willing to serve as directors of the management company for the complex was⁹.

The number of voters who indicated that, if designation proceeds and they purchase their apartments, they are not willing to serve as directors of the management company was⁹.

The number of voters who indicated their willingness to serve as directors of the management company if they purchase their apartments [is less than] or [equals] or [exceeds]¹⁰ ...¹², which is the minimum number of voters required by law in the case of an apartment complex of this size. Thus, the condition relating to the plebiscite result set down in section 55(2)(b) of the Housing (Miscellaneous Provisions) Act 2009 [is] or [is not]¹⁰ satisfied.

Signed
Returning Officer

Date.....



GIVEN under my Official Seal,
21 December 2011.

PHIL HOGAN,
Minister for the Environment Community and Local
Government.

¹⁰Delete underlined text and text in square brackets, as appropriate.

¹²Insert the minimum number of voters required to be willing to serve as management company directors, calculated under section 55(2)(b) of the Act of 2009.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set out arrangements for the tenant plebiscite under, and the terms and conditions of, the scheme for the tenant purchase of local authority apartments provided for in Part 4 of the Housing (Miscellaneous Provisions) Act 2009. The Regulations come into operation on 1 January 2012.

The Regulations prescribe, among other things:

- the amendment of existing tenancy agreements in an apartment complex designated for tenant purchase to incorporate relevant conditions and covenants in the title documents and house rules made by the management company under section 23 of the Multi-Units Development Act 2011
- the minimum period for which a person must be a tenant of a local authority apartment before applying to purchase
- the information that a tenant must supply when applying to purchase
- the method for determining the purchase price and purchase money for an apartment
- the method for determining the deposit payable by a tenant purchaser
- the minimum period for which a charging order shall apply to an apartment sold under the scheme
- the class of apartments excluded from sale under the scheme
- the method for calculating the amount of money that a housing authority must place in the apartment complex support fund on the first sale of apartments in a designated complex.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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