



Short-Term Lets – Key Safe Deposit Boxes

Briefing Paper No. 5

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Published January 2019

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Foreword

In recent months, constituents have approached me to ask about the lawfulness of key safe deposit boxes outside communal properties. These small blocks are now almost a ubiquitous sight outside tenement properties in Edinburgh.

Attached to external walls, they provide secure storage of keys for the communal entrance and individual flats inside. While popular amongst short-term let operators to allow paying visitors access to properties, it is important to note that some key safe deposit boxes also exist to provide access for health and social care staff.

The purposes of this paper is to explore a range of questions that have been asked about key safe deposit boxes and what rights residents have when challenging the installation of these by short-term let operators.

I'd like to thank the Scottish Parliament's Information Centre (SPICe) for providing the legal analysis that has informed this paper. Please note, however, that this paper is not a substitute for legal advice. Should you have any questions about specific cases then it is recommended that you seek the advice of a solicitor. Finally, if you would like to discuss any points raised in this paper then please contact my office (details below).

A handwritten signature in dark ink, which appears to read 'Andy Wightman'.

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Ownership of the external walls of a block of flats

In Scots law, there are two ways in which an external communal wall can be owned. The first is where the external walls are owned collectively, and the second is where portions of the wall are owned individually by the respective flat property.

Collectively owned external walls

The first form of ownership where external walls are owned collectively is quite common in practice in Scots law. Normally this situation arises from specific provisions in the title deeds of the blocks of flats. This, in effect, means that the external walls of the common property is owned by all the flat owners whose title deeds contain the communal provision.

Individually owned external walls

The second form of ownership is where individual flats own their portion of the external wall.

In Section 2 of the Tenements (Scotland) Act 2004 there is a default rule relating to ownership of the external walls. This rule provides that each flat owns the external walls that bound it up to the point their flat meets another flat (2004 Act, section 2(1)). This creates a patchwork effect across the exterior of the tenement building. So, for example, if there were six flats in a building, there would be six separately owned sections of external wall on the outside of the building.

Within these buildings, the internal parts (such as the close and stairwell) are also common property shared equally between all owners. For example, no one owns a particular part of the stairs. All property owners have common ownership and access to all such areas. Section 2(1) of the 2004 Act further states that the external wall of the common passage and stair is also common property.

The effects of different types of ownership

The right to attach a key safe deposit box to a wall depends on who owns the wall. This depends on whether you own the wall, someone else owns the wall or it is owned communally by all the flat owners.

Attaching a key safe deposit box to a wall you own

A key safe deposit box might have been drilled by a flat owner to an exterior wall of a flat he or she owns as part of his or her ownership of the related flat (see Figure 1, below)

The owners of the other flats in the block cannot object to that activity, unless their own property has been damaged in some way by trades people taking access to do the work.



Figure 1: A key safe deposit box attached to an owner's own external wall.

Attaching a key safe deposit box to a wall you do not own

A key safe deposit box might have been attached by a flat owner to an exterior wall of a flat he or she has no ownership of. This is known as an **encroachment** in Scots law and is interpreted as a permanent or quasi-permanent intrusion into property, which is owned or lawfully possessed by someone else.

This can be remedied, as a last resort, by civil court action. Individuals affected can physically remove the box in question in certain circumstances. However, this comes with a heavy caveat with obvious risks attached; including the possible effect on relationships between the neighbours concerned and the fact that a court may later disagree that there was an encroachment.

It is also worth considering the legal doctrine of **accession**, which can be applied in such instances. This means that when an object becomes attached to a building with a reasonable degree of permanence, with the aim of the object serving the building in question, then that object in-turn becomes part of that building.

When accession occurs, the owner of the part of the building the object is attached to, in this case a key safe deposit box, also owns the object.

However, this is where it gets complicated.

Accession is probably in relation to a key safe deposit box. Inside the box, however, there will be a set of keys. These will be considered as another object, and the conditions for that may not apply. In cases such as this, it is vital that individuals seek legal advice.

Attaching a key safe deposit box to common property

The key safe deposit box could be attached to an external wall, which is common property with the person who attached it being one of the common owners. Even if the person who owns the box is one of the owners it is not possible to alter common property without the consent of all the owners of the common property (except in an emergency).

Consequently, one or all of the other common owners could raise a civil court action to challenge what could be deemed an unauthorised alteration. However, if the box has become part of the building by accession, then it will be owned by all the people that own the relevant wall, including the person who attached the box.

Once again, legal advice is highly recommended as removing a key safe deposit box could be interpreted as a further unauthorised alteration.

The possible application of title conditions

Title conditions are legal obligations, which, in relation to blocks of flats, are often set out in a common scheme and are mutually enforceable by civil court action by the flat owners against each other.

In addition to defining the external walls as common property, there may be further conditions that set out details for maintenance, alterations and improvements in the building. In some cases, there will be a voting threshold other than unanimity in relation to work that can be conducted in the common property. A decision can be made, for example, by three quarters of the owners or by a simple majority.

It would be unusual for a title condition to give decision-making power to one owner so, as recommended throughout this paper, it would be prudent to seek a solicitor's advice to identify a property's title deeds and conditions.

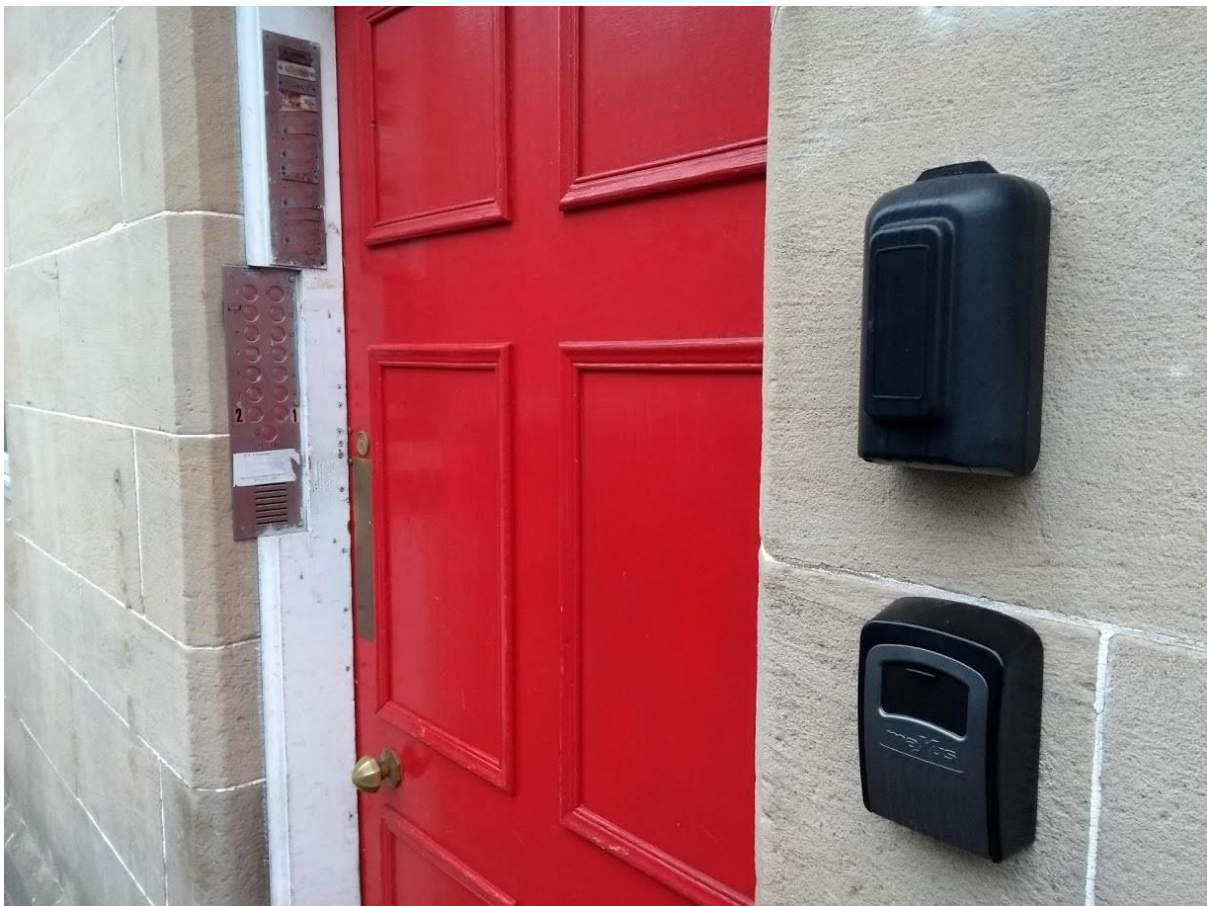


Figure 2: Key safe deposit boxes attached to a communal tenement entrance in Edinburgh.

The Tenement Management Scheme

Introduced in the Tenements (Scotland) Act 2004, this scheme allows owners of a scheme property to make decisions by simple majority on a variety of issues associated with the management and maintenance of blocks of flats. As such this is a default scheme, which applies only, and to the extent that, the title deeds are silent on any given topic.

Scheme property comprises (rule 1.2):

- common property
- property which the title deeds say has to be commonly maintained
- other structurally important parts of the building, including the external walls

Note that, except in relation to emergency work, that this scheme does not give a unilateral right of action to one owner in respect of scheme property.

However, in relation to maintenance (rule 3.1), it does allow decisions to be made by a simple majority. How 'maintenance' is defined and interpreted by the law is very significant. In rule 1.5 it states that the Tenement Management Scheme:

"includes **repairs and replacement**, the installation of insulation, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, **but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance**" (emphasis added)

As before, legal advice is recommended to reflect individual cases.

Rule 3.1 (f) of the scheme allows a decision by simple majority in relation to the specific issue of the installation of a system of entry to be controlled from each flat. As such, a key safe deposit box for the benefit of one flat seems unlikely to fall within the scope of this rule.

Conclusions

Residents who wish to enquire about the installation of key safe deposit boxes can hopefully be better informed as a result of this briefing paper, but each individual case will be different and it is important to seek legal advice.

There are a variety of issues and questions which it will be worth exploring with a solicitor.

- What part of the wall has the key safe deposit box been attached to, and who owns that wall?
- Does the flat owner who attached the key safe deposit box have the right of ownership to that wall? If not, do the laws of encroachment and accession apply?
- Can the common law rules on common property, which require unanimity in decision-making, be applied if the flat owner who attached the key safe deposit box owns the wall as common property?
- What about title conditions or voting thresholds in the Tenement Management Scheme?