

Apartment Owners Associations in the Netherlands: An Empirical Study on How They Function in Practice

Dr. N. Vegter
Prof. dr. L.C.A. Verstappen
Dr. F.J. Vonck

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1. Introduction

Communal property in the sense of land that is commonly held in ownership by a community or a group of people doesn't really exist anymore in The Netherlands. Although there are a few types of communal property in the old sense (pieces of land used by neighbours together, so called 'mandeligheid'), this type of communal property has no significant role in practice. Instead of these old types of communal property rights, apartment ownership is the communal property in modern times. Apartment buildings are used by different people, are often multifunctional and are mostly located in cities.

The legal structure of the entitlement to the parts of an apartment building always balances, on the one hand, the right to use an individual part of the building and, on the other hand, the right to jointly use the common areas of the building. There is always an individual interest (the apartment) and a common interest (the stairwells, driveways, roofs, gardens). Although the point of departure of the legal structure of apartment buildings can differ significantly in jurisdictions¹, they often arrive at the same or similar kind of solutions in practice.

The legal system for apartment rights in the Netherlands is a so-called 'one-tier system': the apartment owners legally own the whole building and the land together; every participant is entitled to a share in the right of ownership. Each share grants the owner the exclusive right to make use of an apartment in the building. All owners of apartment rights, who together are the co-owners of the building and the land beneath the building, have the decision-making power. Many decisions are taken in the framework of an apartment owners' association. Every apartment owner is a member of the apartment owners' association by operation of law. These associations are responsible for the management, use and maintenance of the common areas and the common facilities of the building and they are the platform for decision-making on these issues. The tasks of these associations become more and more significant, while their functioning is sometimes questionable, especially with regard to the maintenance of the building. The government considers the improvement of the functioning of

¹ See for example: Christoph U. Schmid, Christian Hertel and Hartmut Wicke, Real Property Law and Procedure in the European Union General Report, 2005, p. 19 ff., who distinguish four categories of possible legal constructions. [Could you specify these legal constructions?]

apartment owners' associations as a tool to improve distressed districts in general. Therefore, in the past few years the Dutch legislator adopted some legislation on dysfunctional apartment owners' associations. However, it was still unclear to what extent the legal framework of an apartment owners' association contributes to the well-functioning of apartment buildings.

The main research question that this paper addresses is how apartment owners' associations function in practice in the Netherlands. To answer this question, the first-named author conducted empirical research that was defended as a PhD study in 2012.² Before describing the results of this study, which was conducted under the second-named author³, we provide a quick overview of apartment ownership in the Netherlands, focusing on the apartment owners' association and the legal position of its members. After sketching the main results of the research on how well these organisations function in practice, we will outline some of the main recommendations to legislators and legal practitioners.

2. History and designation of the Dutch apartment rights system

2.1. General

The Dutch legislation on apartment rights is rather young. Until 1952 the Dutch Civil Code (DCC) did not contain any legislation on this issue.⁴ The legal regulation of the use of buildings by multiple (co-)owners was only made possible by means of legal entities owning a whole complex and issuing use rights to members or shareholders, or by issuing rights of superficies or leasehold in order to entitle the superficier or leaseholder to make use of – for instance – a certain floor of a building.⁵ In December 1952 the Apartment Act, drafted by professor Beekhuis, came into force and became part of the DCC. This legislation provided for a new legal construction to divide the ownership of a building into apartment rights. It was meant to create a legal structure for stable and financeable rights of entitlement to apartments. In this law, the

² N. Vegter, *De vereniging van eigenaars*, Boom Juridische uitgevers, Den Haag 2012.

³ L.C.A. Verstappen.

⁴ See for other literature: F.H.J. Mijnsen, A.A. van Velten & S.E. Bartels, *Mr. C. Asser's Handleiding tot de beoefening van het Nederlands Burgerlijk Recht. Zakenrecht. Deel 5. Eigendom en beperkte rechten*, Deventer: Kluwer 2008; R.F.H. Mertens, *Appartementsrecht en de welstandsbepalingen* (diss. Maastricht), Deventer: Kluwer 1989; R.F.H. Mertens, C. Venemans & G. Verdoes Kleijn, *Naar een vernieuwd appartementsrecht (KNB-advies)*, Den Haag/Lelystad: Koninklijke Vermande 1997.

⁵ See R.F.H. Mertens, *Appartementsrecht en de welstandsbepalingen* (diss. Maastricht), Deventer: Kluwer 1989, p. 32 ff, A.A. van Velten, *Privaatrechtelijke aspecten van onroerend goed*, Deventer: Wolters Kluwer 2015, p. 446 and A.A. van Velten & F.J. Vonck, *Appartementsrecht en aanverwante rechtsfiguren voor de privaatrechtelijke vormgeving van bouwwerken*, Den Haag: IBR 2016, p. 29-31 and p. 54.

legislator opted for a so-called “one-tier system”. This means that a title to an apartment includes a share in the whole property (Article 5:106 (4) DCC). This share provides the right to the exclusive use of a certain part of the building that is designed to be used privately.

Though the DCC contains basic provisions for the legal construction of apartment ownership, the code does not contain detailed provisions relating to the rights and obligations of apartment owners. Such provisions need to be laid down in the notarial deed of division, which is constitutive of the creation of apartment rights. A copy of this deed needs to be registered in the public records. Nevertheless, a commission of the Dutch Association of Notaries, led by the aforementioned professor Beekhuis, soon took the initiative to draft model regulations to be used as standard regulations for apartment buildings.⁶ In every single division into apartment rights parties have the autonomy to deviate from these model regulations and to stipulate their own conditions, but common practice is that divisions of the right of ownership into apartment rights in the Netherlands take place according to the most recent model regulations, accompanied by just a few deviations laid down in the notarial deed of division.

2.2. Contents of the deed of division

According to Dutch law, it is obligatory that the deed of division into apartment rights contains provisions regarding certain matters. First, the exact location and demarcation of each part of the complex that is destined for the exclusive use by one apartment owner must be indicated in a plan (Article 5:109 DCC). The other parts of the building are common and can be used by all the apartment owners. The extent of these private and common areas is further described in the deed of division itself. Normally, this deed states that the roof, the walls, the electric wiring, etc. are considered as common parts of the complex and thus as common responsibilities for the owners. Furthermore, the deed of division must contain regulations regarding the debts and costs to be paid by the joint owners, as well as regulations with regard to the use of the private and common areas (Article 5:111 DCC). An important part of the deed of division consists of the establishment and the statutory provisions of an apartment owners’ association. The establishment of such an association was optional in 1952, but since 1972 division of ownership of a complex into apartment rights has been required to be accompanied by the establishment of an apartment owners’ association. Every

⁶ The most recent model regulations were set in 2006. An (unofficial) English translation was published by vverecht.nl and can be consulted on their website: <http://www.vverecht.nl/wp-content/uploads/2014/06/Engelse-Vertaling-Modelreglement-2006.pdf> (most recently consulted on 22 November 2016).

apartment owner is also a member of this association by operation of law. Only when the apartment owner transfers his or her apartment right to anyone else, will he no longer be a member.

2.3. Responsibilities of the apartment owners' association

The apartment owners' association consists of several parts. The most important ones are the assembly of owners and the acting board. The board is, for instance, authorised to represent the apartment owners' association and to prepare for a periodical budget – in particular with regard to maintenance costs – to be determined by the assembly. Furthermore, the board is obliged to keep a reserve fund for the purpose of future maintenance costs, to enter into a proper joint insurance for the building, to collect financial contributions from the apartment owners and to organise the maintenance of the building. With regard to its tasks, the board is accountable to the assembly of owners that is entitled to appoint the board and to give instructions to the board with regard to their tasks. For the purpose of ensuring this accountability the board is entitled and obliged to convene the assembly. According to the draft model regulations they are obliged to organise a meeting at least once a year.

The core business of apartment owners' association pertains to the administration and the management, the use and maintenance of the common areas of the building, and the facilitation of decision-making on these matters. Furthermore, the association has the task to represent the apartment owners' interests effectively. In practice, most apartment owners' associations adopt 'housing rules' for these purposes that contain provisions on the procedure in the apartment owners' association and provisions on the use of the common areas that flesh out the general stipulations laid down in the deed of division. According to the draft model regulations these housing rules can be adopted or amended by a two-third majority of the votes in the assembly of owners (Article 59 (4) and 52 (5) draft model regulations).

2.4. Limitations to the power of apartment owners' associations

It is important to stress that the apartment owners' association is only entitled to manage and maintain the land and building as such. From their membership of the apartment owners' association, Dutch law distinguishes another kind of legal relationship between the apartment owners. Since under Dutch law every apartment owner is considered to be entitled to a share in the ownership of the whole complex, there is also a community of owners that embodies their legal link to the building from a more property law perspective. Whereas the apartment owners' association is authorised to manage the common areas and

facilities, the community of owners is entitled to acts of disposition with regard to the land and the complex and to change the deed of establishment.⁷ The distribution of powers between these two entities (the apartment owners' association and the common owners) has been debated for quite some time. The question who decides on what is important since decisions in the apartment owners' association can be taken by a majority or — under specific statutory provisions — a supermajority of the owners, whereas dispositions by the community of apartment owners can — normally — only be undertaken unanimously.

The main rule is that the community of owners is governed by the deed of division: any proposed amendment to this deed needs to be adopted by the community of owners and thus by the co-owners of the apartment complex. This means that if the apartment owners, for instance, wish to change the regulation of the costs and debts payable by the common owners or if they wish to change the core provisions on the use of the common or private areas, a decision by the community of owners is needed. Also, the statutory provisions of the apartment owners' association are laid down in the deed of division, so a change of these provisions is only possible by a decision of the community. This means that all apartment owners have to vote in favour and, moreover, it requires the approval of limited rights holders (Article 5:139 DCC). As the Civil Code stipulates that each apartment owner is obliged to keep the layout of the building in accordance with the deed of division, not only this kind of legal amendment requires a change of the deed, but also physical alteration — for instance the gathering of two private areas — does so.⁸ Nevertheless, with regard to the issue of physical alteration of the building, the Dutch Supreme Court provided a slight easing of the conditions: if a certain change to the physical appearance is of a temporary nature and can be easily reversed, the permission for such a change can be considered as an act of management more than an act of disposition.⁹ The apartment owners' association is authorised to undertake this kind of management acts.

Furthermore, the Supreme Court has allowed the apartment owners' association to adopt certain regulations on the use of the private areas in the building.¹⁰ Although the responsibility of the association merely concerns the common

⁷ See A.A. van Velten & F.J. Vonck, *Appartementsrecht en aanverwante rechtsfiguren voor de privaatrechtelijke vormgeving van bouwwerken*, Den Haag: IBR 2016, p. 56-62.

⁸ N. Vegter, *De vereniging van eigenaars*, Boom Juridische uitgevers, Den Haag 2012, p. 128.

⁹ HR 7 april 2000, ECLI:NL:HR:2000:AA5405, NJ 2000/638.

¹⁰ HR 10 maart 1995, ECLI:NL:HR:1995:ZC1666, NJ 1996/594 and 595 (m.nt. W.M. Kleijn); HR 26 mei 2000, ECLI:NL:HR:2000:AA5964, NJ 2000/640.

areas and regulations on the use of private areas need to be laid down in the deed of division itself, the Supreme Court ruled that under certain conditions, the use of private areas may be regulated in *housing rules* set by the apartment owners' association as well. This is possible as long as the deed of division provides for such a power of regulation explicitly and as long as the association adopts rules of order with regard to the actual use of the building as such. The rules must thus concern uses of the private areas that are tangential to the use of the building as a whole and thus sufficiently related to the core business of the apartment owners' association. Consequently, the apartment owners' association is normally entitled to set rules for instance on the permitted amount of noise nuisance or on the keeping of pets.

The foregoing illustrates that the Supreme Court leaves quite some power to the apartment owners' associations to regulate the common use of an apartment complex. In addition to this, also the Dutch legislator leaves more and more powers to this association. Since 2005, Article 5:139 (2) DCC stipulates that the apartment owners' association is even entitled to change the deed of division, as long as a majority of 80 percent of the votes approve such a change. Since such a decision can easily ignore the legitimate interests of the minority of the apartment owners, this change of the legislation was coupled with some safeguards for them. Any apartment owner that did not vote in favour of such a resolution is entitled to claim annulment of the resolution in court, which claim will be granted if that owner suffers harm as a consequence of the desired change of the deed of division.

3. Recent developments regarding apartment owners' associations

In short, one can say that the apartment owners' association is the linchpin of each Dutch apartment building. It represents the interests of the common owners, it is responsible for the maintenance of the — often very many — common areas and facilities of the complex and it is entitled to regulate the use of both these common parts and the private areas in the building. Of course, in theory the apartment owners' associations are sufficiently equipped to fulfil their important tasks. One important aspect in this respect that was already mentioned is that the apartment owners' associations have the possibility to save money for future maintenance costs. These savings in a reserve fund belong to the assets of the association of apartment owners itself and are thus not susceptible to claims of the creditors of individual apartment owners. At most, these creditors can take recourse on the apartment right of their debtor as such. Since the membership of

the apartment owners' association is inextricably linked to each apartment right, the proceeds will be higher if the association saved more money, yet the savings remain available for the maintenance of the building. Furthermore, the draft model regulations contain detailed provisions on the functioning of apartment owners' associations: they need to assemble once a year, they in particular need to provide a yearly budget and a long-term maintenance plan.

That is the theory. Nevertheless, there can easily be a wide gap between the rules in the civil code and the deed of division, on the one hand, and practice in apartment buildings on the other hand. An apartment owners' association comes into existence by operation of law and each co-owner becomes a member of the association in the same way. It may very well be that – until major damage has occurred to a common part — members are not actually aware of the existence of the association, nor are they aware of the possibility of saving money for future costs by the association. Furthermore it may well be that not every owner does want to save money for those future costs. As the boards of apartment owners' associations can easily consist of well-meaning volunteers — members of the association itself — it might be that in such cases the association will not force its members to pay their fair contribution. Often, nobody pays any contribution at all. That could easily lead to severe problems if, later on, the association faces substantial costs that need to be incurred by the co-owners from the moment to the other. In other words, there is quite a risk that apartment owners' associations do not function that well in practice, in particular that due maintenance is not done.

In recent years, the problem of dysfunctional apartment owners' associations has been addressed by the Dutch legislator. The first important change of the law came into force in 2005. Since this change, an apartment owners' association is not only entitled to create a reserve fund, but also obliged to do so. Currently, an amendment to this obligation is pending¹¹, giving clear rules on the exact size of such a fund: according to this rule, which is expected to come into force in 2017, the apartment owners need to save each at least 0.5 per cent of the reconstruction value of the total building yearly as long as no maintenance schedule has been drawn up that justifies a lower yearly amount. Another important change of the law came into force in 2011. On 1 July 2011, a new Article 5:127a DCC was introduced, stating that municipalities are allowed to ask authorisation from the court to convene the assembly of owners and to make

¹¹ Legislative proposal 34 479, Wijziging van Boek 5 van het Burgerlijk Wetboek in verband met het verbeteren van het functioneren van verenigingen van eigenaars (Wet verbetering functioneren verenigingen van eigenaars), submitted to parliament in mei 2016.

proposals with regard to the maintenance of the building. The municipality is also allowed to force an apartment owners' association to draft a maintenance schedule and to actually carry out the plans in that schedule. However, all these laws are still 'theory'; it is interesting to research how well apartment owners' associations actually function in practice.

4. Research questions

As has been mentioned before, our research question was quite simple: How do apartment owners' associations function in practice? The background of this question is the hypothesis that with good functioning apartment owners' associations, it is possible to improve distressed areas in cities, which relatively often have neglected apartment buildings. To learn how to improve the functioning of apartment buildings, one first needs to retrieve what is going wrong. If you know what can be improved, specific recommendations for improvements of the law and/or the governance of apartment buildings can be given.

This main question is divided in two sub-questions:

1. To what extent is the *legal structure* of the apartment owners' association relevant for the *well-functioning* of the apartment owners' association?
2. To what extent is there a *relationship* between *the formal functioning* of apartment owners' association and *the substantive functioning (maintenance)* of apartment owners' association?¹²

Two aspects play a key role in answering the first question: Do apartment owners' associations live up to the rules of the law? Do they follow the rules in the deed of division? If this is the case, does this lead to well-functioning apartment owners' associations? The second question relates to the link between the formal functioning of an apartment owners' association and the substantive functioning of it.

¹² We distinguish *formal functioning* from *substantive functioning*. Substantive functioning refers mainly to the actual maintenance of the common areas and facilities in the apartment building.

To answer these questions on the basis of empirical research, we used some terms with specific content. An apartment owners association is *active* if it adheres to at least one of the six characteristics of a formally functioning apartment owners' association. An apartment owners' association is *functioning formally* if:

1. there is an acting board;
2. at least one annual meeting of the assembly of apartment owners is held;
3. there is a long-term multiannual maintenance plan;
4. financial contributions are collected regularly;
5. there is a reserve fund;
6. there is joint insurance.¹³

A '*sleeping*' apartment owners' association does not have any of the above mentioned characteristics of a formally functioning apartment owners' association. Ideally, an apartment owners' association takes care of transparency, flexible decision-making and administration/management of the building.

5. General characteristics of housing in The Netherlands

Before discussing the results of our research, we would like to show some data on apartment ownership in The Netherlands that was already available from research in the past.¹⁴ There are approximately 7 million homes, of which 60% is on the market and 40 % is social housing. Approximately 2.2 million households live in apartments, 600,000 of whom own the apartment. These are managed by 118,000 apartment owners' associations. We expect these numbers to rise because a lot of social housing will be privatised through creating apartment ownership and selling apartments on the market. Approximately, one third are mixed buildings consisting of both privately owned apartments and social housing. About 50,000 apartment owners' associations are situated in one of the four big cities in The Netherlands, The Hague, Rotterdam, Amsterdam and Utrecht. Most distressed areas in The Netherlands can be found in those cities, especially in Rotterdam.

¹³ These criteria have been established by stakeholders ('Vereniging Eigen Huis' and 'Stichting VvE Belang', several branch-organisations, Consen and the ministry for Spatial Planning and environment).

¹⁴ The following information and statistical data come from Laagland'advies (2002); Companen (2007 en 2010).

What are the characteristics of apartment ownership in The Netherlands? The typical apartment household has one or two people. Most of the apartment owners are young people up to 35 years old and elderly people of 75 years and older. Another characteristic of a typical apartment owner is relatively high education. Only approximately 35 % of all the apartment owners have an income below the average. Apartment owners aged between 35-55 years and people with low income relatively often live in an apartment with poor and overdue maintenance. Apartment owners stay for a relatively short period in the apartment: more than 50% move within five years to another place. For those people, long term investments in the apartment building do not pay off. Therefore, people are not inclined to invest in maintenance and renovation, for example, in energy saving measures.

The quality of housing increased between 1990 and 2000: the average repair and renovation costs because of overdue maintenance decreased from 4.200 to 2.500 per home. Not more than 15% of the home owners are dissatisfied with the maintenance of their house. This percentage is higher among apartment owners compared to other categories.

Overdue maintenance is to be found mainly in apartment complexes that were built before World War II with relatively bad energetic characteristics, as well as four to five-storey apartment buildings, especially in cities like The Hague and Rotterdam, concentrated in certain districts of the city.

Statistical numbers collected from our land registry, show the variety of types of apartment buildings in terms of number of apartments.

Apartments per building	Number of associations
1-2	48.000
3-10	40.000
11 and more	30.000
Total	118.000

City	Number of associations
Den Haag	20.000
Amsterdam	15.000
Rotterdam	10.000
Utrecht	5.000
Total	50.000

6. Functioning of apartment owners' associations; available data

In 2002, around 75% of all apartment owners' associations were active; until 2009 this figure rose to 90%. Most of the non-active apartment owners' associations are located in the four big cities. Analyses show that when an apartment building has more than four storeys, the apartment owners' association is almost always active. There are substantial common areas and elevators in these apartment buildings which have to be managed. Non-active apartment owners' associations are to be found in buildings in which the apartments can be accessed through separate entries, mostly two-apartment houses or buildings, which can be accessed directly from the street. The apartment owners know each other, and there are less common rooms and shared responsibility, so there is no need for a formal organisational structure.

Further existing empirical data reveal an increase of the functioning of apartment owners associations from 2002 to 2010:

Formal functioning:	2002	2010
acting board	66%	--
annual meeting	60%	88%
multiannual maintenance plan	33%	50%
collecting contribution	75%	91%
reserve fund	33%	50%
collective insurance	--	89%
Substantive		

functioning:		
major maintenance	56%	--

In 2010, almost 80% of all apartment owners' associations met four out of the last five criteria. One of the conclusions of the earlier research was that there is a positive correlation between formal functioning and substantive functioning. In other words: overdue maintenance are to be found more in apartment buildings which are managed by apartment owners' associations that do not function properly. However, in 2002, it appeared that this is not the only factor. Another conclusion was that apartment owners associations that do not function formally can function substantively in terms of taking care of maintenance. The following characteristics are believed to be plausible indicators of maintenance activity, listed in a degressive order (the *italic* indicators have a legal background):

1. type and size of the apartment building
2. duration of stay of the owner in the apartment
3. *multiannual maintenance plan*
4. living environment
5. *meetings of the assembly of apartment owners*
6. when the building was established
7. *collecting contribution*
8. income of the apartment owners
9. age
10. size of municipality
11. former tenant of the apartment
12. *acting board*
13. composition of the household
14. ethnic group
15. *collecting contribution for maintenance*

Several stakeholders promote in one way or another adhering to the rules laid down in the articles of the deed of division in apartments ownership that govern the apartment owners' association. The notary, for instance, needs to ask the board for a declaration regarding the annual contribution overdue by apartment owners as well as the amount available in the reserve fund for maintenance before each transfer of apartment ownership. Municipalities invested in information campaigns. Firstly, they have an even stronger tool to enforce maintenance obligations: the administrative order of the municipality to maintain the building when an apartment building is not complying with the Building decree 2003. Secondly, the municipality has the power to stimulate

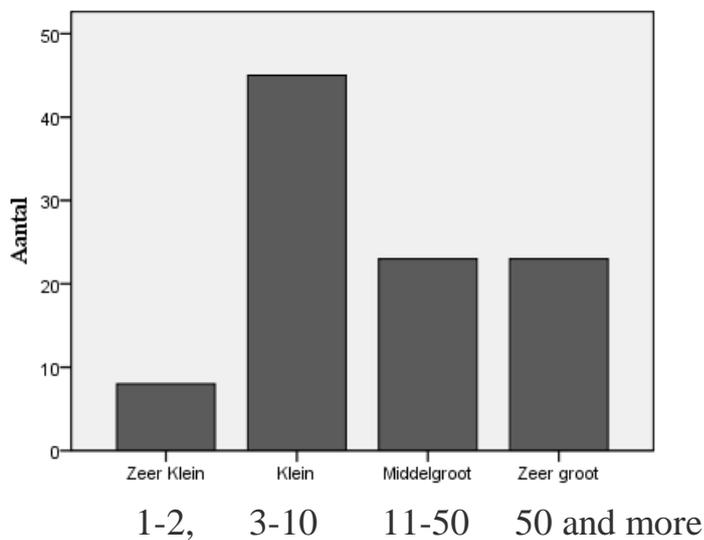
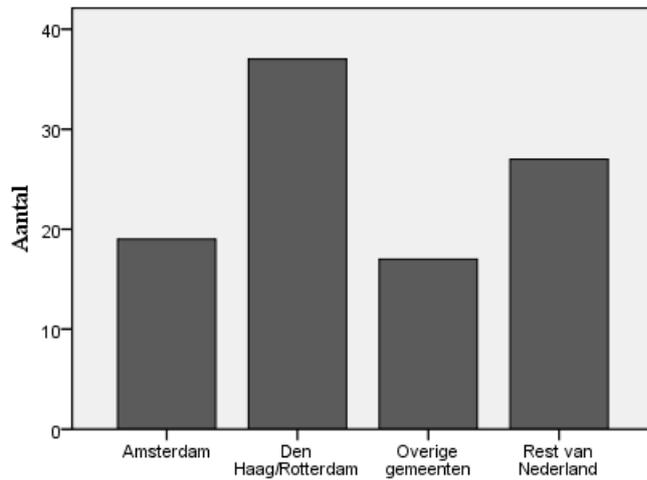
decision-making, to enforce the obligation to have a maintenance plan and to outsource the maintenance of the building to a professional managing organisation. Thirdly, municipalities developed a quality certificate for apartment owners' association that comply with certain standards. Finally, another option to improve the maintenance of apartment buildings is the merger of small apartment owners' associations. The idea is that management and maintenance is cheaper through upscaling and professionalising administration/management.

7. Research design; methodology

The research we've conducted, following on the research discussed above, consisted of two separately executed consultations: a questionnaire with 50 questions that were put to 100 representatives of apartment owners' associations and an internet survey of apartment owners, with fewer questions (17) but more people who answered them (1.811).

7.1. Interviews

The first round of consultations was done using a questionnaire that was answered by 100 apartment owners' associations, responsible for the administration and management of apartment buildings with homes. At first, we tried to ask a *representative* number of apartment owners' associations of a certain size. For that purpose, we divided the available apartment owners' associations in four groups in terms of size (1-2, 3-10, 11-50, and 50 and more) and region (Amsterdam, Rotterdam, The Hague, other big cities, and the rest of The Netherlands). Later on, we were confronted with some practical problems getting those categories filled with enough apartment owners' associations, so we were forced to select on willingness, availability and accessibility. It appeared that medium-size to large apartment owners associations, as well as apartment owners associations in the big cities are overrepresented, whereas the small and the ones that are located in the rest of The Netherlands are underrepresented.



As a preparation to hold the interviews, we did some test interviews in the beginning. These preliminary interviews took place in the apartments of the owners. Researchers studied agenda's and minutes of meetings, regulations and finally also attended meetings of assemblies of apartment owners.

The 50 questions in the questionnaire dealt with four problem areas:

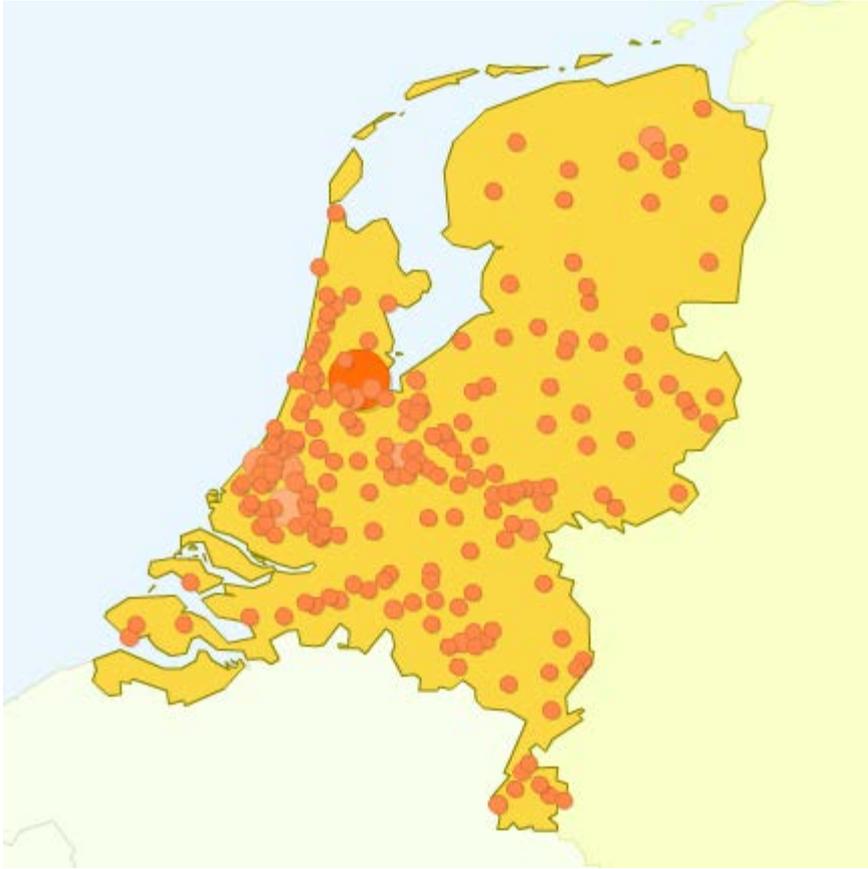
- transparency (knowing, understanding and accessibility of the regulations);
- decision-making (division between the powers of the (board of the) owners association and the common owners as such, as well as conflict of interest);
- enforcement (supervision on how owners live up to the rules); and;
- management (incompetent board, 'sleeping' apartment owners associations, overdue maintenance).

A total of 77 apartment buildings were only used as dwellings; 23 buildings had multiple functions, such as housing and shops or offices. 10 apartment buildings were subdivided.

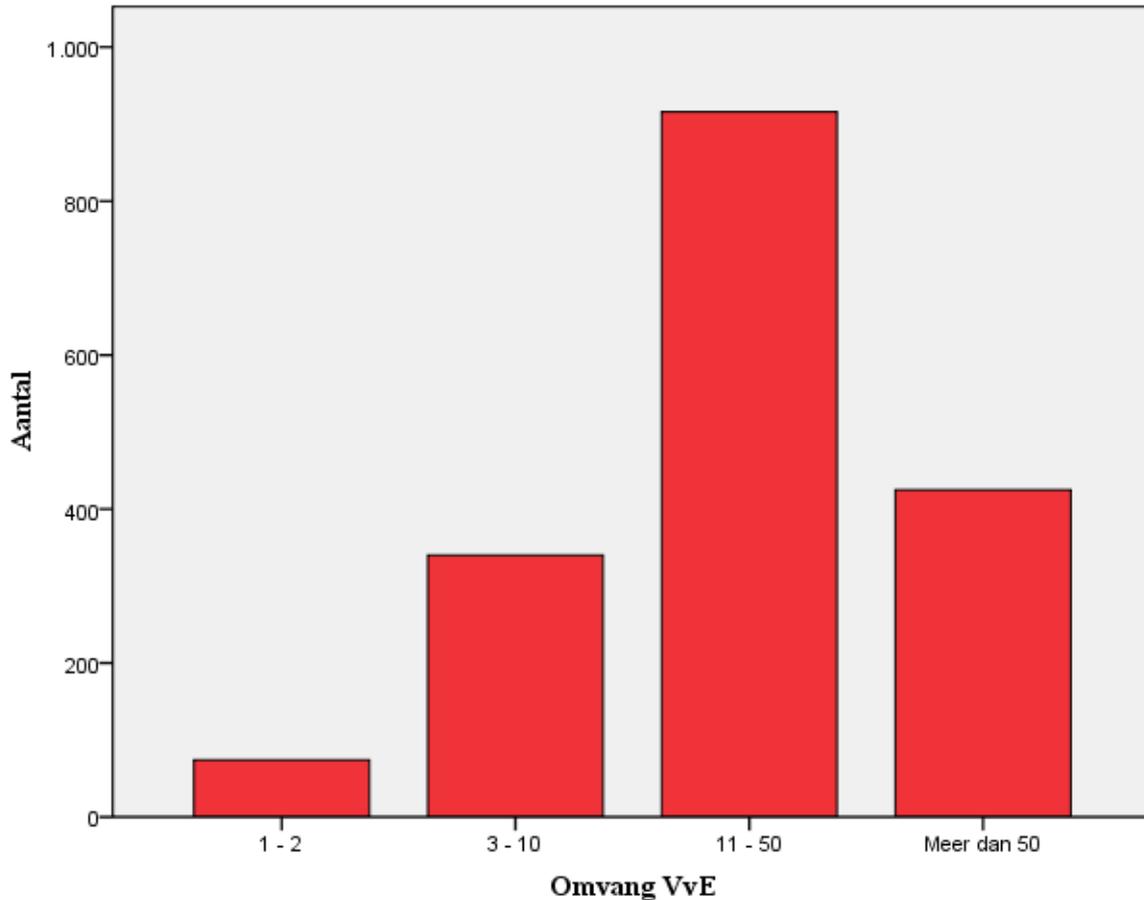
The interviews took place via telephone from November 1st, 2009 to March 1st, 2010. The questions were sent in advance. The interviews lasted on the average 30-45 minutes and they were based on a topic list. The questionnaire was filled in by the interviewer directly during the interview. The questionnaire contained control questions to authenticate given answers. The results were coded and analysed using Statistical Products and Service Solutions (SPSS). All interviews are recorded.

7.2. Internet survey

The second consultation was done via the internet. A list of questions for apartment owners was distributed widely. This short was a short survey with 17 questions, preceded by some general questions. This has been filled in 1.994 times between April 23rd and September 1st 2010 by 1.811 apartment owners who are member of an apartment owners association. We distributed the survey through the website of Foundation Apartment Owners' Interests and through the website of the ministry of Spatial Planning and Environment. It has been advertised in a Magazine for Apartment Owners' Associations, the newsletter of Association of Home Owners, and other internet fora. The answers came from all over the Netherlands, predominantly from the western part of the Netherlands, which actually is also the most densely populated area.



In terms of size of the apartment owners' association, the category medium size apartment owners' associations was overrepresented and the small ones underrepresented compared to the actual volume of the four categories of apartment ownership associations as mentioned above.



Vertical: Number

Horizontal: Categories of apartment owners' associations

The results were also coded and analysed using Statistical Products and Service Solutions (SPSS). The purpose of this internet survey was to test the results from the face to face interviews as described above. The answers given in the interview might be biased because the persons who were interviewed are or were in the past involved in the administration/-management of the apartment owners' association as board member.

The 17 closed questions were put into four categories of questions:

1. characteristic of apartment owners' association;
2. six elements on the formal functioning of apartment owners' associations:
 - there is an acting board;
 - at least one annual meeting of the assembly of owners is held;
 - there is a long-term multiannual maintenance plan;
 - financial contributions are collected regularly;
 - there is a reserve fund;
 - there is joint insurance.
3. Maintenance issues:

- the actual maintenance situation;
- overdue maintenance;
- the level of satisfaction of the apartment owners' on the maintenance.

4. conflicts on maintenance.

8. Results

As stated before, the general conclusion is that apartment owners' associations in the Netherlands function quite well. Problems relating to transparency, decision-making, compliance and management are not as severe as had been expected. Only a limited proportion of owner-occupied apartments are not actively managed at all. Probably around 90% meet at least one of the procedural requirements for the operation of an owners' association. Approximately 75% of the owners' associations meet all the requirements. According to the procedural requirements, an owners' association must have a committee, meet at least once a year, collect financial contributions regularly, keep a reserve fund, have a long-term maintenance plan and have a joint insurance policy. Approximately 80% of owners' associations are functional as far as property maintenance is concerned; in other words, the owners' association carries out maintenance of the common areas and facilities of the apartment complex. 65% per cent of the apartment complexes have a maintenance backlog, but the proportion with severe maintenance backlogs is limited; severe maintenance backlogs in apartment complexes is therefore only an incidental problem.

The correlation between formal functioning and substantive functioning is weak to moderate. A maintenance backlog is not always caused by failure of the owners' association to comply with procedure. However, owners' associations which comply with more of the procedural requirements do maintain the common areas and facilities more often than owners' associations which comply with fewer of the procedural requirements.

Keeping a reserve fund and drawing up a long-term multiannual maintenance plan are the most important factors for carrying out maintenance of the common areas and facilities in an apartment complex.

Apartment owners' associations comply reasonably well with the applicable regulations. The number of owners' associations that do not comply with

obligations specifically laid down by law is limited. Forty per cent of apartment owners' associations fail to comply with other regulations set out in the division regulations or the housing rules. Compliance with the applicable rules makes a difference to how well an apartment owners' association functions. An apartment owners' association is more transparent if it complies with the statutory regulations. An apartment owners' association also functions more efficiently if the decision-making takes place at the statutory annual meeting of the assembly of owners. Moreover, the apartment owners are more satisfied with the operation of the apartment owners' association if the association follows the rules. The most important point is that compliance with the regulations contributes to the implementation of major maintenance work on the common areas of the apartment complex. In addition to compliance with the legal rules, good relations between the apartment owners are conducive to satisfactory operation of the apartment owners' association. A high value under the Valuation of Immovable Property Act or a recent construction date also have a positive influence on the operation of the apartment owners' association.

There is a striking difference in the way large apartment owners' associations and small apartment owners' associations function. Small apartment owners' associations are able to ensure that major maintenance is carried out on the common areas of the apartment complex without complying with the statutory regulations. However, some form of permanent organization does help to ensure satisfactory operation as regards maintenance.

In small associations, maintenance backlogs are most frequently caused by poor relations between the apartment owners. Large apartment owners' associations do need to comply with the regulations; in these associations, maintenance backlogs are mainly caused by a dysfunctional committee or a dysfunctional manager. A dysfunctional committee or manager is the result of a lack of transparency.

9. Recommendations

The study concludes that the basic nature and structure of the apartment owners' association should remain the same.

Decision making

The first improvement that could be made to the structure of the apartment owners' association is the modification of the tiered decision-making procedure. Unanimity should remain necessary for selling or encumbering property of the community. A four-fifths majority is required to change the share ownership structure and the distribution of costs. Three quarters of the votes are needed to change the voting ratio, while a two-thirds majority is enough for amendments to the rest of the provisions of the articles of association.

Applicable articles of the law

The next improvement would be to move the relevant provisions in Title 2 of Book 2 of the Dutch Civil Code to Part 2 of Title 9 of Book 5, so that the applicability of the provisions from the law of associations becomes clearer. It would be helpful if some solutions were set out in the articles of association, because it is recommended that the articles of association will be registered in the public register as a separate notarial document. It would be beneficial to follow the example of the French and Belgian regulations and provide for the use of proxies in the articles of association. The use of electronic forms of communication should also be provided for in the articles of association, so that the apartment owners become more involved. A distinction should be made between solutions for dysfunctional small apartment owners' associations and dysfunctional large apartment owners' associations.

Small apartment owners' associations

In small apartment owners' associations with only two apartment owners, decision-making could take place without any meeting by means of electronic communication, provided both apartment owners vote. On the basis of a decision, both apartment owners could be authorised to represent the apartment owners' association. The apartment owners' association would no longer be obliged to appoint a committee and for apartment buildings divided into two apartment titles, registration in the Commercial Register could be abolished. The two apartment owners would be jointly liable on the basis of the distribution of costs; the simplest way to determine the distribution of costs would be to make it proportionate to the share ownership structure. The regular financial contribution could be determined on the basis of a long-term maintenance plan. The cooperation of both apartment owners would still be required for any amendment to the deed of division.

Large apartment owners' associations

To improve transparency in large apartment owners' associations it is important to make a distinction between the tasks and powers of the board and the tasks

and powers of the assembly of owners. Another improvement would be to include more duties of disclosure for the committee in the articles of association. In addition, the chair of the assembly of owners can function as a liaison between the committee and the assembly, and supervisory boards should check the operation of the committees of large apartment owners' associations with due care.

Role of notaries and municipalities

Finally, a few external parties could help to improve the operation of apartment owners' associations in the Netherlands. The role of the civil law notary in preparing and amending a deed of division (or sub-division) and in transferring the title to an apartment could be tightened. Municipalities should be cautious about using the far-reaching powers granted to them in the 2011 legislative amendment. The public interest involved does not warrant making apartment owners' associations work together in an overarching body. However, it might be possible to provide financial support to compensate for the notarial fees associated with increased scale or the activation of an apartment owners' association for a division into apartments dating from before 1972. Housing associations will have to provide tenants with adequate information about the consequences of the development of increasing numbers of mixed complexes.

Outsource administration and management

Finally, in the future the need to outsource the management of apartment complexes to professional companies will steadily increase. It is therefore desirable for interest groups to develop a coherent certification system.