



PROPERTY UPDATE

Property Factors (Scotland) Act 2011 (“the Act”)

The Property Factors (Scotland) Act 2011 is due to come into force on **1st October 2012**. The main purpose of this new piece of legislation is ‘to provide a greater level of protection for homeowners in Scotland who receive services from property factors’.

Housing Associations which manage the common parts of land used to any extent for residential purposes are classified as ‘property factors’ (s2) for the purposes of the Act and therefore this new legislation will have a direct impact on the services that Housing Associations provide.

The Act comprises three main sections as summarised:

1. The introduction of compulsory registration for all property factors.

The Act provides for a public register of property factors to be set up and maintained by Scottish Minister.

Operating as a property factor without registration will be an offence which will be liable on summary conviction to a fine (not exceeding level 5 on the standard scale – currently £5000) or to imprisonment for a term not exceeding six months or to both.

An application to Scottish Ministers for the registration of a property factor will only be accepted on the basis that they meet a fit and proper person test and that they show full cooperation in complying with the property factor code of conduct. In the instance that Scottish Ministers refuse an application or where an existing property factor is removed from the register, the individual/body concerned will be unable to recover any costs in respect of work instructed or any charges incurred.

Once a property factor is registered, this will be valid for **three** years from the date on which the entry on the register is made. A property factor can be removed from the register where they fail to meet any of the requirements for approval of application to the register. Where a property factor fails to register or is removed from the register they are no longer able to recover costs in respect of work instructed or charges incurred. Furthermore, a homeowner is able to appoint a new property factor in this situation.

2. A new code of conduct setting out the minimum standards of practice for the industry.

The minimum standards to be introduced by the new code of conduct are still to be finalised and the Scottish Government has only just completed the process of holding a 12 week consultation on the matter. This consultation period ended on the 16th December 2011. Although the exact standards property factors will need to meet are not yet finalised, there are eight provisions which have been considered in the consultation period, as follows:

- **General Obligations**

The new Code of Conduct will apply to all property factors, subject to two exceptions. Firstly where the property title deeds conflict with the Code and secondly, where the Code contradicts the contractual agreement between the property factor and the homeowner.

- **Written statement of services**
Property Factors will be required to provide each homeowner with a written statement listing all responsibilities.
- **Communication and consultation**
Property factors are not allowed to provide homeowners with false or misleading information.
- **Financial Obligations**
Property factors will need to ensure that there is a clear separation between the property factors' bank account and the account holding funds belonging to the homeowner.
Factors should provide to the homeowner a detailed financial breakdown of the charges made in writing at least once a year.
- **Debt Recovery**
Property factors will be required to provide a clear written procedure for debt recovery.
- **Insurance**
Property factors will be required to have and maintain adequate professional indemnity insurance.
- **Carrying out repairs and maintenance**
Property factors must put in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.
- **Complaints Resolution**
Property factors will be required to provide a clear written complaints resolution procedure and any complaints received from either homeowners or third parties must be recorded.

3. **The introduction of a Dispute Resolution route for homeowners.**

A Homeowner Housing Panel will be established. Disgruntled homeowners can ask the Panel to determine whether a property factor has failed to carry out a property factor's duties or to determine whether a property factor has failed to comply with the code of conduct. Where the Panel considers it appropriate, they can even provide a Property factor enforcement order which would require the property factor concerned to execute such action/payment as they consider necessary.

Practicalities

- Applications for registration will be made to the Scottish Ministers however the style of application form is not yet finalised.
- A registration fee will be payable – this has not yet been set however the scheme to be self-financing and not profit-making.
- Once registered, a property factor will be allocated a registered number which will require to be included, where possible, in all documentation sent to homeowners.
- During each three-year registered period, property factors will be obliged to advise Scottish Ministers (i) if details change from the original application; and (ii) at the end of each financial year provide details of any properties factored during that financial year.

Conclusion

Prior to 1 October 2012, there is still a considerable amount of detail to be provided on the operation of the register of property factors, including the registration process, cost involved and the code of conduct.

As more detail becomes available, property factors will need to ensure that they are prepared to complete the administrative requirements for registration and that their processes and policies adhere to the code of conduct.

We will keep you updated as these details become available.

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