



Factoring Policy

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Scottish Housing Regulator Guidance:	

Vision

By providing aspirational homes and high-quality services we will transform communities to enhance the quality of life of our customers.

Values

- ***Customer and Community Focused***
- ***Treating our customers with respect***
- ***Accountable***
- ***Making a difference***
- ***Innovative***
- ***Equal access to services and opportunities for all***

Strategic Objectives

- ***Deliver first class customer services***
- ***Provide quality homes, communities and sustainable tenancies***
- ***Achieve robust financial management and governance excellence***
- ***Empower, develop and engage our staff***
- ***Build strong collaborative relationships locally and nationally***

FACTORING POLICY

Ardenglen Housing Association can provide this procedure on request, in large print,

CONTENTS PAGE

SECTION 1	Introduction and Background
SECTION 2	Aims of the Policy
SECTION 3	Purpose
SECTION 4	Compliance with Charter
SECTION 5	Title Deeds/Deed of Conditions
SECTION 6	Code of Conduct
SECTION 7	Property Factor Register
SECTION 8	Maintenance Duties
SECTION 9	Management Duties
SECTION 10	Insurance
SECTION 11	Accounting and Common Charges
SECTION 12	Credit Control
SECTION 13	Complaints Handling
SECTION 14	Changing your Factor
SECTION 15	Data Protection
SECTION 16	Consultation
SECTION 17	Training
SECTION 18	Equalities & Diversity
SECTION 19	Monitoring & Reporting
SECTION 20	Review
SECTION 21	Distribution

1. INTRODUCTION & BACKGROUND

Ardenglen Housing Association is a recognised Scottish charity (SC032542), established in 1990. Ardenglen is a community based Housing Association, in Castlemilk, South East Glasgow. The Association provides a factoring service to 22 owners and sharing owners, whose properties fall within our area of management.

This policy reflects the terms of Section 14 of the Property Factors (Scotland) Act 2011. Ardenglen's Property Factor Registration Number is PF000168, re-registration took place on 08/11/2021, with a requirement to re-register every 3 years.

2. AIMS OF THE POLICY

The Association aims to provide an efficient and effective factoring service to all owners to ensure that areas commonly owned are both satisfactorily maintained and adequately insured. In doing so, we aim to maintain the asset value of both owners and Ardenglen's properties, as well as allocating the full costs for common areas to the rightful proprietor.

Ardenglen will have regard to the following when carrying out its role as factor:

- The Law (statute and common law)
- Title Conditions (Scotland) Act 2003
- Tenements (Scotland) Act 2004
- Property Factors (Scotland) Act 2011
- Written Statement of Services
- Factoring Agreement
- The Scottish Housing Charter
- Data Protection Act 2018 (GDPR)
- Equality Act 2010
- EU Procurement Directives
- Procurement Reform (Scotland) Act 2014.

All public procurements in the UK have to comply with the relevant principles of the EU Treaty, and contracts with a value above certain thresholds are subject to the procedural rules in the EU Procurement Directives, and the UK Procurement Regulations that implement these directives. This legal framework helps to ensure that public procurement is conducted in a fair and open manner both within the UK and across the EU.

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The terms of the factoring service provided by Ardenglen to owners/sharing owners will be covered under Section 11 – Accounting and Common charges.

3. PURPOSE

The purpose of this policy is:

- To provide clarity and accountability in property management matters, defining the respective duties, responsibilities and obligations of both owner and the Association,
- To give owners a platform to participate in the factoring process and be involved in decision making that effects their property,
- To provide a basis for decision making in relation to property management matters
- To provide a quality service as well striving to achieve value for money.

4. COMPLIANCE WITH CHARTER

- **Equalities**
Every customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.
- **Communication**
Customers find it easy to communicate with their factor and get the information they need about their factor, how and why it makes decisions and the services it provides.
- **Participation**
Customers find it easy to participate in and influence their factor's decisions at a level they feel comfortable with.
- **Value for Money**
Tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

5. TITLE DEEDS/DEED OF CONDITIONS

Ardenglen has been appointed factor on the basis of Title Deeds for each block .

The Title Deeds define the location of the owners property and advises on their rights and responsibilities for their property and their shared responsibilities for the common block. They may also state who owns the common parts and tells owners about their obligation to manage and maintain them.

The Association is governed by the Law of Statute and Law of Contract, in so far as, they relate to property management activities. The Deed of Conditions will be the

legal document for sharing owners and outright owners and should form the basis of all dealings with these customers

The Deed of Conditions will include the following:

- A definition of the property, together with a location plan,
- Definition of common parts, the private parts, and the rights of use and access and the responsibilities for maintenance relating to the same,
- Definition of the common charges for which each proprietor shall be responsible, specifying and handling of repairs (both reactive and cyclical or planned), management of administration charges, insurance premiums and service charges,
- Reserved rights of access for the Association or its agents to the property not in its ownership,
- Provisions for instructing, inspecting and executing common maintenance,
- Arrangements for the accounting of common charges; invoicing and payment thereof, including debt recovery procedures,
- Arbitration and resolution of disputes,
- Insurance arrangements,
- The duties of the factor and the appointment of the Association as factor,

Title Deed vary from development to development. In all instances the Association shall instruct that the Deed of Conditions will contain sufficient powers for the Factor to adequately manage the property.

Sometimes the Deeds are not clear about how the building should be managed, what shares proprietors should pay, some are very outdated as they were drawn up before there were such things as Door Entry systems. Therefore, the Scottish Parliament passed the Tenements (Scotland) Act 2004), so that where things were missing or not clear from the Title Deeds, there was a fall back position for owners to ensure that the common parts of the building are properly maintained by all owners . This act sets out a Tenement Management Scheme and owners can adopt the relevant parts of it that are missing or unclear in the actual Title Deeds.

Examples of the costs include:

- The whole costs of buildings insurance obtained by the Association in respect of the proprietor's property,
- The whole costs of any repairs instructed by the Association in acting as Factor,
- The whole costs of any services provided to the proprietors by the Association in acting as Factor,
- The Association's administrative costs incurred in acting as factor. These shall be reviewed with regard to the actual costs of Factoring,
- All relevant taxes, eg. VAT at the statutory rate.

The remainder of this policy will indicate how the Association will generally deal with issues relating to shared and outright owners. However, it is the Deed of Conditions

that should always inform individual cases and should always be referred to in relation to any issue.

6. CODE OF CONDUCT

The Property Factors (Scotland) Act 2011 - Code of Conduct sets out minimum standards of practice for registered property factors and has been prepared in terms of section 14 of the Property Factors (Scotland) Act 2011 (“the Act”). Registered property factors are legally required to ensure compliance with the Code in terms of section 14(5) of the Act.

The Code of Conduct is one of three main elements of the Act, as well as:-

- A register of all property factors operating in Scotland
- A dispute resolution mechanism – the First-tier Tribunal for Scotland (Housing and Property Chamber) formerly known as homeowner housing panel.

7. PROPERTY FACTOR REGISTER

The Property Factors Register was established as a result of the implementation of the Property Factors (Scotland) Act 2011. The Act aims to set minimum standards of practice for the residential property and land management industry and to provide increased protection for homeowners who use the services of a property factor. The Property Factors Register is compulsory for residential property and land managers whether they are private sector businesses, local authorities or housing associations operating in Scotland.

The register came into force on 1 October 2012, and it will be an offence to operate as a property factor without being registered.

After 1 October 2012, the public will be able to use this site to search the register for registered property factors and/or property and land that is maintained by a registered property factor on behalf of homeowners.

8. MAINTENANCE DUTIES

8.1 Emergency Works to Common Parts

The Association shall attend to Emergency and Urgent repairs that affect the common parts without prior notice to the proprietors. This work will be in accordance with the Association’s Maintenance Policy.

The work instructed will be to make safe and prevent further deterioration or danger. Thereafter, it will be dealt with as a routine repair. Details of the procedure are detailed below:

8.2 Repairs to Common Parts

Repairs to common parts can be carried out without prior notification by the factor if the value of repair per property is below a minimal amount (noted in Title Deeds – range from £200 to £2,000). However, it is the Association's interest to give the proprietors advance notice before actioning repairs.

When notifying the proprietors the factor will aim to provide the following information:

- The works required,
- The cost per proprietor affected,
- The number of proprietors affected,
- An estimated start and completion date and the name of the contractor who will undertake the works,
- As factor, we can arrange for work to be carried out with our without consent of all owners/proprietors,
- The share of the cost of these repairs will be dependent on the number of owners/proprietors it affects. The Title Deed will specify the relevant share.
- As factor we can arrange for all emergency work, where we believe there is a risk to the owners/proprietors or property, without any prior notice,
- Minor repairs to common parts can also be carried out with or without prior notification,
- Major works will require prior agreement from the majority of owners. A meeting should be called giving each proprietor/owner or their agent the opportunity to attend with a least 7 days advance notice.
- The meeting will discuss the need or desire for the work and the consequences of not doing the work. A majority agreement is the aim. Each proprietor is entitled to one vote per property.
- If a majority vote does not prevail, the chairperson of the meeting has a casting vote.
- Improvement works will require the agreement of 100% of proprietors.
- Recharge Repairs will be billed separately (six monthly). Details will include, when it was carried out, by whom and the total costs.

The decision to appoint a contractor will be in accordance with the Association's Procurement Manual and within the Financial Regulations.

8.3 Emergency Out of Hours

The emergency operation can instruct the execution of a repair which is solely the proprietor's responsibility, however, the proprietor shall pay the full costs of the repair including any administration fee payable to the emergency administrator.

8.4 Access

The Association shall retain the right of access with appropriate notice, except in an emergency, to inspect, instruct or execute repairs to the common parts.

8.5 Private Works

As a factor, the Association can provide information to proprietors, on request, for private works, eg. Internal repairs within their home. The Association will have no further involvement in the event of a dispute.

9. MANAGEMENT DUTIES

9.1 Enforcement of Deed

The Association shall publish and revise, as appropriate, information in relation to their developments. This may include general information on the Association and its activities and more specific information relating to the proprietor's property.

The proprietor shall have a right of complaint and appeal as are afforded to the Association's tenants through the Association's complaints procedure, including the right to appeal to the Public Services Ombudsman Services. This will be in addition to their right to seek arbitration as provided for within the Deed of Conditions.

Proprietors shall be informed of their rights of appeal in an appropriate and relevant manner.

The Association shall, failing resolution of a dispute within the procedures described above, reserve the right to take such legal action, as may be deemed necessary, to enforce the terms of the Deed.

The Association's debt recovery procedure will be followed in such instances

9.2 Nuisance

The Deed of Conditions shall inform proprietors of their responsibilities and prohibitions on their behavior which are likely to give annoyance to their neighbours. The Association will implement this when appropriate under their obligations as a factor.

Where proprietors undertake prohibited activities (listed in the deed), the Association shall take such steps, as it is empowered to do, as per Deed of Conditions, to avoid and remove or resolve the case of the dispute.

The Association shall take action so far as the Deed of Conditions shall permit, against proprietors, who are responsible for nuisance or annoyance or damage to the property. Such action shall be of a similar nature to that taken against tenants for similar nuisance, annoyance or damage, in so far as the Deed of Conditions shall permit and appropriate advice taken from the Association's solicitors.

10. INSURANCE

Buildings insurance is provided for within the Association's comprehensive Block Policy, copies of which are available from the Association on request. Properties are insured for full reinstatement value. The premium is reviewed on an annual basis, and is recharged to owners accordingly.

The Title Deeds/Deed of Conditions dictate whether an owner has the ability to opt out of the Association's Block Insurance policy. Owners who opt out of Block Insurance policy will be required to provide evidence (annually) that they have adequate building insurance cover in place.

11. ACCOUNTING AND COMMON CHARGES

Management Fees Service Charge

The charges will be reviewed annually and approved by the Association's Management Committee. The owners will be sent a letter, at least 28 days before any changes to the charges take effect. This should include the following:-

- The address of the property
- Insurance premium
- Service information
 - repairs, energy, replacements to:
 - i) Stair Lighting
 - ii) Stair Cleaning
 - iii) Ground Maintenance
 - iv) Back court Maintenance
 - v) Gutter Cleaning
 - vi) Common Electrics (Door Entry; TV Aerial)
 - vii) Energy Costs
- Factor's Management charge

This is purely to cover the cost per annum of management, including administration, inspection and advice.

Invoicing – Annual Common Charges

Owners will be invoiced for all common annual factoring charges in April each year. Owners can pay the invoice in full within 30 Days, or repay in equal monthly or quarterly instalments - ensuring their factoring account is clear by 31 March each year.

Invoices – Recharge Repair Charges

Owners will be invoiced twice a year (September and March), and require to pay the balance in full within 30 Days, or discuss and agree a repayment plan with the Finance Assistant.

Invoices – Planned Cyclical and Major Repairs

Owners will be invoiced on receipt of the final account. Payment is due within 30 Days, or discuss and agree a repayment plan with the Finance Assistant to ensure that the invoice is repaid within 12 months.

Deposits

The Association will hold factored deposits in a separate nominal account with Ardenglen's accountancy software. The factoring deposit is detailed with the Deed of Conditions, and is refundable when owners sells the property and has a clear factoring account.

Administration Charges – Change of Ownership

When a property is sold, the Association as factor incurs additional administration costs. Correspondence and liaison with the legal representatives of purchaser and seller are given priority as there are usually time restraints on the sale. A standard administration fee is charged for this service. The fee level is normally reviewed annually.

12. CREDIT CONTROL

Our Factoring Debt Recovery Policy details the Association's approach to arrears and control of same. This procedure is reviewable on an annual basis. The quarterly Management Accounts highlights factoring arrears. Where legal action is required, each high arrears case will be dealt with on an individual basis.

Under both the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004, depending on whether dealing with a house within an estate or a flat within a block, the following procedure applies. The procedure is called a Notice of Potential Liability for Costs. This notice may be registered against the title of a property where there is an unpaid bill, in relation to repairs or maintenance. If a notice is registered against the title of a property, any new owner of the property is jointly liable with the former owners for costs relating to any maintenance or work carried out before they purchased the property, if the notice is registered at least 14 days before they have purchased the property.

The Notice requires to be registered at Registers of Scotland. The notice requires to be renewed after 3 years.

13. COMPLAINTS HANDLING

Ardenglen has a clear written procedure for dealing with complaints which outlines the steps we will take when an owner is dissatisfied with the factoring service we provide.

Ardenglen will not charge for handling a complaint. We will keep a written record of all complaints received and their outcome and use this information to make improvements to our factoring service.

Ardenglen will comply with any request for information from the First-tier Tribunal for Scotland (Housing and Property Chamber), the Scottish Public Services Ombudsman and the Scottish Housing Regulator, in respect of any complaint application made to them.

14. CHANGING FACTOR

As per the Title Deeds/Deed of Conditions, owners may wish to change factors, however there must be a majority of owners within the block that wishes to change. The process would be:

- Ask for a meeting of all the property owners to discuss management options
- Attend a meeting and vote your choice of property factors.
- If a new property factor is appointed, agree the date for the new factor to take over responsibilities of property management including building insurance
- At any time, the Association can also transfer a factored block to another agency as successor.

15. DATA PROTECTION

Under the Data Protection Act 2018 (GDPR), the Association will advise Owners how it will use and share your personal information.

All factors are required by the Property Factors (Scotland) Act 2011 to register the address of all properties which they factor with the Register of Property Factors, established and maintained by the Scottish Government. The Association, as the factor of a property, must register certain information about the property that it factors.

Accordingly:-

1. The Association will use personal information as a factoring customer, comprising of your name and address, to operate its Factoring Service.
2. The Association will share the factored property address, as a factoring customer, with the Scottish Government for the purposes of the Register of Property Factors, as required by the 2011 Act, but will not share it with anyone else unless you are asked for your agreement first.
3. The Association will hold your personal information on a secure database and will not allow access to it by unauthorised users/personnel.
4. The Association will remove your personal data from its secure database and destroy it when you cease to be a factoring customer.

16. CONSULTATION

This policy has been reviewed internally by the Finance Manager and will be made available for consultation with all Ardenglen Housing Association's Management Committee and staff via the Association's IT network. An article will be published on our newsletter to allow policy consultation with our tenants and owners.

17. TRAINING

Appropriate training will be provided to members of the Management Committee and Staff Members to ensure that they have the necessary information, skills and confidence to make informed choices and contribute effectively.

18. EQUALITIES AND DIVERSITY

This policy will be implemented in line with our Equality and Diversity Policy and is subject to an Equality Impact Assessment. An EI Assessment has not been completed, however, the focus of the policy has been assessed as having a neutral

impact on the protected characteristics. This demonstrates our ongoing commitment towards providing quality services for all.

19. MONITORING AND REPORTING

The Association will use appeals, complaints, comments or suggestions from users of this policy to monitor its effectiveness. These will also be used to prompt a review of the policy where necessary.

20. REVIEW

This Policy will be approved by the Management Committee. It will be reviewed every three years unless amendment is prompted by a change in legislation, or monitoring and reporting reveals that a change in Policy is required sooner.

21. DISTRIBUTION

This policy will be made available to every employee and committee member and will be made freely available to any tenant or interested party.

DEBT COLLECTION PROCEDURES

It is the responsibility of the Association as Property Manager to recover all costs associated with operating the Property Management Service.

Whilst we will do everything possible to assist owners with financial difficulties our policy is quite clear that a firm and consistent approach be taken to arrears. Whilst legal action is a last resort, the Association will ultimately take whatever action is appropriate and necessary to recover the debt.

You should pay your account within 14 days of receiving it. Remember the Association has already paid out money to contractors etc and is therefore dependant on recovering these sums.

If you anticipate difficulty settling your account in full within the required timescale please contact our Finance Department as soon as possible. An arrangement can be made to pay the account by instalments.

If you approach the Association for assistance we will normally take a sympathetic and understanding approach. If however you fail to contact the Association and do not pay your account then the Association will have no option but to take legal action to recover the debt.

Initially, interest of 5% will be charged to all accounts for non payment. Reminder Letters will be sent advising you of when this action will occur.

Additional administration and legal costs associated with Debt Recovery Action will then be charged to your account.

Where the Association obtains a decree for payment and the debt is still not cleared the decree may be enforced by:

- wage arrestment
- bank account arrestment
- intercepting payments due to you by a third party
- stopping you selling your house.
- instructing sheriff officers arranging for sale of your household contents

At any stage the Association is prepared to negotiate with you an arrangement to pay by instalment. Please ensure therefore that you always contact us in the event of financial difficulties.

All information will be treated in the strictest of confidence.

Rights and obligations?

How do I find out about my legal obligations and rights as an Owner?

These are set out in the Title Deeds , Deed of Conditions and the Disposition for your property and should have been explained to you by your solicitor at the time you bought the property. If you do not have a copy of these, either contact your solicitor to obtain them or for a small charge, you can get copies from the Registers of Scotland 9 George Square Glasgow G2 1DY Tel 0845 607 0164 or 0141 306 1718. Their email address is **customer.services@ros.gov.gov.uk**. These documents set out how the building should be managed, the appointment of the factor and what their responsibilities are ,and your shared responsibilities for the upkeep , maintenance and management of the common parts of the building.