

KNOWES HOUSING ASSOCIATION LTD	
Policy Name	Owner Occupiers
Policy Category	Finance
Policy Number	FP13
Date to Finance Sub	22 nd January 2019
Last Review Date	December 2014
Next Review Date	January 2022 (or earlier if required)
Actual Review date	
Signed:-	
Links to other policies	Repairs and Maintenance policy
Consultation	Staff/Finance Sub Committee

1.0 Introduction

- 1.1** The objective of this policy is to define the Association's role and responsibilities as property factor to home owners within the Clydebank area. The majority of these properties would have been purchased under right to buy schemes and/or re-sold to new owners since; others are properties within blocks where the Association has purchased properties through the Mortgage to Rent or empty homes schemes.
- 1.2** At this present time the Association is property factor to 588 properties in the Faifley/Duntocher/Hardgate areas. These numbers will change on a periodic basis due to further right to buys, buy backs and possible demolition.
- 1.3** This policy will also cover the issues of owner-occupiers' legal responsibilities and the administration and the collection of charges due to the association.

2.0 Legal Position

- 2.1** In 2012 Knowes applied for registration on the Property Factors Register with the Scottish Government. Knowes' registration was approved and a registration number of PF000201 was issued to Knowes. Knowes' registration is required to be applied for every three years. The HOF is responsible for applying for the registration. The most recent registration was approved in December 2018.
- 2.2** The Code of Conduct for Property Factors sets out the minimum standards of practice for registered property factors and is prepared in terms of Section 14 of the Property Factors (Scotland) Act 2011.

2.3 The Code of Conduct was introduced under the provisions of the Property Factors (Scotland) Act 2011, which aims to create a statutory framework which will provide increased protection for homeowners who use the services of a property factor.

2.4 The Act has three main elements:

- a compulsory register for property factors;
- a Code of Conduct with which all registered property factors will be required to comply, and which will set minimum standards of practice for the residential property and land management industry; and
- A statutory dispute resolution mechanism, known as the First-tier Tribunal for Scotland Housing Property Chamber (formerly the Homeowner Housing Panel). Homeowners are able to make applications to the tribunal if they believe their property factor has failed to comply with either their factoring duties or with the Code of Conduct.

2.5 All elements of the Act came into force on 1 October 2012 and from this date it is an offence to operate as a residential property factor in Scotland without being registered.

2.6 The law on land and property ownership in Scotland used to be based on the feudal system. However the following acts have reformed this system and now govern the basis for owner occupation in Scotland:-

- Abolition of Feudal tenure, etc. (Scotland) Act 2000
- Title conditions (Scotland) Act 2003
- Tenements (Scotland) Act 2004

2.7 The title deeds are the legal documents which confer ownership and will include a description of the property and land and any dispositive conditions (also known as burdens) imposed on the person who has bought the land and/or property (owner-occupier). The title deeds (also known as the 'Deed of Conditions') impose a responsibility on the owner to contribute towards the costs of necessary repairs and maintenance of land and common pathways, fences, etc. within the estate. It will also include a legal obligation to pay the share of common repairs to their property.

2.8 Where the title deeds are 'silent' with regards to owner responsibilities then the Association will refer to the Tenements (Scotland) Act 2004 for guidance on the owner's rights and responsibilities and how common repairs may be carried out and recharged.

2.9 The owner's title deeds describe the action required in the different situations. Generally however where an individual's share of the cost will exceed £700 or such sum as increased by the Association, the Association have an obligation to write to owners giving adequate notice of holding a meeting for the owners in the close. Where there is a majority of owners in a close (and voting is required) votes will be based on one per property and the majority vote will carry.

3.0 Risk Assessment

3.1 This policy addresses the risks associated with:-

3.2 Failure to comply with the Code of Conduct imposed by the Property Factors (Scotland) Act 2011.

3.3 Failing to keep the association's properties and open spaces to a high standard of repair and maintenance causing danger to residents and visitors to the area.

3.4 Failing to recover all owner charges due to the Association leading to cash flow problems, tenants' rents subsidising the owners and a shortage of money to carry out repairs.

3.5 The Association being unable to recover costs due to non-compliance with proper procedure.

3.6 Complaints from owners through lack of communication leading to referral to the First-tier Tribunal.

4.0 Factoring Service to flatted properties

4.1 Knowes also has additional duties as property manager/factor to 189 flatted properties within Faifley and Duntocher. These are properties within a common building with shared responsibilities for repairs and maintenance of that building. The Factoring agreement is set out within the Title deeds of these properties and makes provision for Knowes to arrange block buildings insurance cover and carry out necessary repairs and maintenance to the common parts of the building. The costs of these repairs can then be recharged to the owners within the building - apportioned on a basis as set out in their title deeds. All future purchasers of flats with a common entrance where Knowes' maintains an interest in the building will be required to participate in the Factoring Service.

4.2 New owners are required to pay £100 into the scheme as a repairs float. This is returned to them when they sell their property provided their account is clear. Knowes reserves the right to change the amount of this float from time to time.

4.3 There is an annual factoring fee to cover administration costs of the service. The fee is reviewed annually by the Finance Sub-Committee. Owners, who are not in the common repairs service, are charged an administration fee set as a percentage of the costs of repair and maintenance works. This fee has upper and lower limits and is also reviewed annually by the Finance Sub-Committee. All charges to owners are subject to VAT but the Association has elected to apply the extra-statutory concession which relates to owner charges. The exempts the Association from charging VAT on certain common charges whilst the exemption remains in place.

4.4 All these details are given to owners as part of an owner's handbook. Any changes in the year will be notified to owners via Knowes' quarterly newsletter.

- 4.5 Neighbour disputes and anti social behaviour complaints are dealt with under the Anti Social Complaints Policy.

5.0 Notification of Repairs and Maintenance Costs

5.1 The Association aims to keep the costs of administering services to owners as low as possible. Hence owners will not normally be notified in advance of minor repairs. Therefore if an owner's share of the cost is estimated to be below £160 no advance notification will be given. (This amount is subject to review by Knowes). The only exception to this will be in the case of owners not part of a commonly owned property or in a four in a block who will be advised of all works in respect of which they may be able to make an insurance claim. In respect of insurance work needing done to common parts of properties, Knowes will usually make the insurance claim and recharge the owners for their share of the insurance excess.

5.2 Where the estimated cost of repairs or maintenance work is more than £160 but less than £700 per owner (these figures are subject to revision from time to time by the Association), where possible, each owner will be informed in writing before work starts. Exceptions to this will be in an emergency situation where delay would be dangerous or a health hazard. Owners will be given details of the work to be carried out and the reason it is necessary, the name of the contractor who will carry out the work, its likely duration and the estimated cost per owner. This commitment to notify owners of works likely to cost over £160 relates only to individual items of work. Owners may well receive accounts which amount to more than £160 but for which no prior notification was given – for example two repairs costing £80 each plus the factoring fee.

5.3 In the case of any maintenance works likely to cost more than £700 per owner, where appropriate, the Association will write out to all the owners concerned (with the option to call a meeting where necessary) to discuss the work, why it is necessary and the estimated cost. The Association will discuss with owners any other means by which the necessary work could be done. However if agreement cannot be reached the Association will exercise its legal right to have the necessary works carried out and charge owners for their share of the cost.

5.4 Where work is judged to be an improvement to the property, the Association needs to gain consent of all the owners in the building before the improvement work can be carried out. Where consent is not obtained – only that part of the work which is of a necessary nature can be charged to the owner. Whether work is termed as either 'necessary' or an 'improvement' will be judged on an individual basis – for example, replacing a roof would be seen as necessary where roof tiles have reached the end of their useful life. Where it is not clear whether a work is a repair or improvement Knowes HA will refer to the title conditions, the Tenements (Scotland) Act or may seek legal advice.

5.5 For painting and other cyclical work where the cost is generally less than the £700 (value at 2018, reviewed every three years as part of policy review), owners will be notified a minimum of **four** months prior to the proposed start date of the work planned. The owners will then be informed of the actual cost of

the work a minimum of **two** weeks prior to work commencing. Invoices will be issued to owners as part of the next quarter or bi-annual factoring invoice.

5.6 When major component replacement is planned owners affected by the work will be informed of the proposals a minimum of **four months** in advance of the start date. Where the estimated cost per owner is greater than that stated in the Owner Occupier Policy and factoring conditions, the owners will be given the option of attending a meeting to discuss the work as well as being given written information regarding the proposals. Where there are more owner occupiers than Association owned properties in any close the owners will have the right to vote on the proposal. The Association will inform owners about repair and improvement grants, and will provide details of the work to WDC grants section. Accounts will be issued within the next factoring invoice. Invoices should be cleared within 21 days of receipt of the invoice, however the owner may apply to the Finance Team to make arrangements to pay by instalments.

5.7 When day to day repairs are required to common parts of properties, owners will be informed of the repair and given as much information as is available where the cost is estimated to be significant i.e. over £160 per owner. Where minor repairs are carried out the costs will appear on the owners accounts.

6.0 Majority Owner Occupation

6.1 There will be situations where the majority of flats within a block of houses within an estate will be in private ownership. In the case of the majority of flats within a block having been sold, the Association reserves the power to act as the Factor or appoint the factor for as long as it has any property within the block.

6.2 This provision is to allow the Association to safeguard the interests of its remaining tenants in the block. Where all the flats are sold the owners can decide to appoint another factor – but this must be agreed by the majority of owners in the block and at least three months' notice given to the Association.

6.3 In estates where the Association has no interest at all in the property, owners may request to become part of the Association's factoring service. However as the Association is a charity this would only be considered under exceptional circumstances, for example, if it were to serve the wider interests of proper estate management. A legally binding factoring agreement would need to be drawn up and all the owners in the building would be required to agree to be bound by it.

7.0 Administration

7.1 The Repairs Section is responsible for ensuring repairs invoices are input into the system and correctly apportioned between properties. The Finance Section is responsible for sending out the invoices and income collection.

7.2 To enable the Association to recover the administration costs in running the service to owners a factoring fee will be charged to owners in the factoring

service and administration fees will be charged to owners in non-flatted properties.

- 7.3** Whilst every attempt will be made to recover the administration costs involved, it is recognised by the management committee that a lot of time is spent with owners answering queries and recovering debts. This extra time spent by staff, highlighted in time allocation statements, could not fairly be apportioned to all owners. For example, some owners pay their bills regularly and very rarely query items charged whereas others continually query everything on their bill and take up a great deal of staff's time with this and other matters. In the general interests of estate management and providing a sustainable community for all our residents – tenants and owners alike – then it is recognised and accepted by the Management Committee that the cost centre for owner occupiers will possibly run at a loss for the foreseeable future.

8.0 Income Collection

- 8.1** For owners in the factoring service, invoices will be issued quarterly at the start of April, July, October and January. The invoices will contain all common repairs completed during the previous three months (including maintenance and component replacement work), landscape maintenance for three months, factoring fees for three months and property insurance for three months.
- 8.2** Owners who form part of the landscape service only will normally only be billed twice a year at the start of April and October. An administration charge will be made for this bill and any other bill issued in the course of the year.
- 8.3** Owners will be issued with a covering letter with their account giving any further relevant information about the costs involved. Accounts will be payable within 21 days of receipt. The Association may allow a discount to those owners in the factoring service who settle their full bill within 21 days.
- 8.4** The Association takes very seriously the need to recover amounts invoiced to owners. Failure to do so would result in the costs being borne by tenants' rents.
- 8.5** Continued failure to pay or to make or keep to a satisfactory arrangement will result in the debt being passed to a collection agency for recovery. Legal action for debt recovery will be taken where necessary. The Association will seek to recover all debt collection and legal costs incurred from the defaulting owner.
- 8.6** Where an owner has an outstanding debt and it is considered that there is a high risk that the owner will not clear the debt in a reasonable time, a notice of potential liability will be recorded on the property title. The Finance Officer will make the final decision as to the perceived risk in each instance.

9 Debt Recovery

- 9.1** Owners have 21 days to make payment in full. Owners can contact the Finance Section within the 21 day period to make an arrangement to pay by regular instalments or standing order.

- 9.2** As close to as possible after the 21 day period has expired a first reminder is issued. After a further 14 days the second reminder is issued giving the date the invoice has to be paid or the debt will either be passed to a debt collection agency or our Solicitor for court action to be raised. If after that period of time no payment has been received, or an arrangement made to pay by instalment, the debt is passed to the debt collection agency or to Knowes' Solicitor. The debt collection charges are added to the owners account. The owner will be issued with a letter advising them of this action. The debt collection agency will advise the Finance Officer, on a weekly basis, of all payments received. The Finance Section will also advise the debt collection company of any payments received at the office.
- 9.3** If the owner does not make contact with the debt collection agency within 21 days or make contact with the Finance Officer to discuss a repayment plan the debt collection agency will issue a further reminder. The debt collection agency will then advise the Association of all unpaid debts. The Finance Officer will decide if court action is to be raised and at this time the debt collection agency will carry out a house visit to serve a Notice of Court Action. If still no contact has been made the Finance Officer will gather all necessary paperwork and pass this to Knowes' solicitor. The solicitor will issue a final seven day warning letter to the owner which requests the owner contact them or the Finance Officer to discuss a repayment plan. Owners will be advised throughout the debt collection procedure that all charges incurred are added to their debt and that they should contact the office to avoid this from happening. Owners are advised that if court action is raised this could affect their credit rating and may result in an earnings arrestment being served on their employer.
- 9.4** In some cases Knowes will instruct its Solicitor to apply for a Notice of Potential Liability to be attached to the Title of the property. This means that the owner cannot sell the property without the Association being involved in the process. This should enable the Association to recover all monies outstanding. If the amount is not recovered from the selling owner the new owner of the property becomes liable for the amount outstanding and will be pursued for the debt. The Notice must be renewed every three years. The Finance Officer will look at each owner on an individual basis and make the decision as to whether this action is deemed necessary.
- 9.5** If the Association is carrying out a major contract i.e. re-roofing or roughcasting the Finance Officer will decide whether or not to apply for a Notice of Potential Liability for the properties involved in this project before the works commence. The Finance Officer will take into account the past history of payments made by owners.

10.0 Notification of Resale

- 10.1** If the owner is proposing to sell his/her property the Association must be advised by the Solicitor of the details of the sale, e.g. date of sale, new owner's name, etc. The Association will normally make a charge to the solicitor for providing this information.
- 10.2** Any outstanding repairs will be apportioned between the new owners accordingly.

10.3 The float of £100 (factored owners only) will be deducted from the final bill or returned to owner if account is clear.

11.0 Reporting Procedures

11.1 The Property Services Manager will ensure that the Finance Officer is informed of any works that will result in owner invoices and is copied in to all correspondence in relation to same. Owners' enquiries are recorded and monitored to ensure response is given within the time scales.

11.2 The Head of Finance will make reports to the Finance Sub-Committee on the management of the owner occupier and factoring system as follows:-

- Value of accounts outstanding (six monthly)
- Percentage recovery (six monthly)
- Number and value of accounts at debt collection (bi-annually)
- Recommended owner accounts for write-off (bi-annually)
- Recommended bad debt provision (annually)

11.3 Once a year the Finance Sub-committee will review owner fees and charges and have the authority to adjust these in light of inflation and the costs of providing the service. The Head of Finance will provide the Finance Sub Committee with all relevant costings in order to allow the Committee to set charges at a fair and reasonable level.

12.0 Complaints and Appeals

12.1 Knowes operates a comments, suggestions and complaints procedure which it makes accessible to all its residents. Feedback is asked for from owners through customer satisfaction surveys and scrutiny panel (when one is running). Information is given to owners via appropriate Scottish Government booklets, staff meeting with owners, the website and newsletters.

12.2 Any complaints concerning owners will be passed to the appropriate authority within the Association with the highest level being the Director.

12.3 Where an owner is unhappy with the conduct of the Association's staff or with a decision made against them, the final recourse of a complaint is to the First-tier Tribunal.

13.0 Written statement of Services

13.1 Under the Code of Conduct Knowes HA is required to provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between Knowes and the homeowner.

13.2 If a homeowner applies to the First-tier Tribunal for a determination in terms of section 17 of the Act, the Panel will expect Knowes to be able to show how its actions compare with the written statement as part of its compliance with the requirements of this Code.

13.3 Knowes HA will provide the written statement:

- to any new homeowners within four weeks of agreeing to provide services to them;
- to any new homeowner within four weeks of Knowes being made aware of a change of ownership of a property Knowes already manages;
- To existing homeowners within one year of initial registration as a property factor – this has been completed within the timescale.
- Or before that time if Knowes is requested to do so by a homeowner (within four weeks of the request) or by the homeowner housing panel (within the timescale the homeowner housing panel specifies);
- To any homeowner at the earliest opportunity (not exceeding one year) if there are any substantial changes to the terms of the written statement.

14.0 Equalities Statement

14.1 Knowes Housing Association as an organisation seeks to embrace diversity, promotes equal opportunities for all and eliminates any unlawful discrimination in all areas of our work.

Home owner housing panel

The HOHP forms part of the First-tier Tribunal for Scotland Housing Property Chamber.

The address is:

First-tier Tribunal for Scotland Housing and Property Chamber

Scottish Courts and Tribunal Service

4th Floor

1 Atlantic Quay

45 Robertson Street

GLASGOW

G2 8JB

The telephone, e-mail and website details are as follows:-

Telephone Contact: 0141 302 5900

Email Contact: HPCadmin@scotcourtribunals.gov.uk

Website Contact: www.housingandpropertychamber.scot