

# Abandonment Policy & Procedure

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Focus

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Integrity



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## **Introduction**

- 1.1 This Policy is intended to clarify the process that the Association is required to undertake when we believe that a property has been abandoned by the tenant.

## **2 Scope and Principles**

- 2.1 The Housing (Scotland) Act 2001 and the Scottish Secure Tenancy Agreement details how a tenancy can be ended when the Association believes that the tenant has absconded and the tenancy has been abandoned.
- 2.2 The challenge is how to balance efficient management of the housing stock with the requirement to follow the letter of the law. A property may appear to be empty and 'abandoned' but in many cases a tenancy is still likely to exist. If the Association gets it wrong the tenant may have a valid remedy through the courts requiring the landlord to:
- Allow the tenant to return to the property if it has not been re-let
  - Or provide the tenant with another property.
  - The tenant could also raise separate actions for compensation:
    - For stress, inconvenience, anxiety, depression etc.
    - For property left in the property that may have been disposed of or damaged in the enforcement of the original abandonment notices.
- 2.3 The policy aims therefore to only serve abandonment notices where the property has actually been abandoned and investigations confirm this.

## **3 Aims & Objectives**

- 3.1 The Association's tenancy agreement provides information on the steps that should be taken by individual tenants to end their tenancy agreement. However, should the outgoing tenant fail to provide this, then the property may be deemed to be abandoned. The Housing (Scotland) Act 2001 makes provision for landlords through a Scottish Secure Tenancy to take possession of a property that has been abandoned.
- 3.2 The aim of this policy and procedure is to ensure that Cloch Housing Association's properties are occupied by legitimate tenants and that steps are taken as quickly as possible to recover possession of properties which have been abandoned and are empty.
- 3.3 This policy details how abandonment should be dealt with in accordance the Housing (Scotland) Act 2001. Details of all abandonment notices served will be registered on the Association's IT system.
- 3.4 This policy provides the Association's staff with clear and consistent procedures to be used when dealing with abandoned properties. These present a great practical problem for any landlord. An abandoned property represents lost revenue, continuing maintenance costs and a risk of vandalism.

- 3.5 If the procedures are used this should help to reduce the number of abandoned properties that the Association has to deal with, and minimise lost rent and other costs.

## **4 Legal & Regulatory Context**

- 4.1 From a tenant/landlord perspective, the requirement to occupy the property is contained within the Scottish Secure Tenancy Agreement which tenants have signed with the Association. The key legislation behind the tenancy agreement is the Housing (Scotland) Act 2001.

- 4.2 In developing this policy the Association has taken into consideration: -

- Housing (Scotland) Act 2001 - Sections 17-21
- Scottish Secure Tenancy (Abandoned Property) Order 2002
- Housing (Scotland) Act 2014
- The Scottish Social Housing Charter
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Scottish Secure Tenancy and Short Scottish Secure Tenancy Agreement

Equality & Diversity Act 2010

SFHA Raising Standards in Housing (Chapter 8) - Void Management (July 2002)

General Data Protection Regulations

## **5 Risk Management**

- 5.1 Risk can arise from the Association's Abandoned Property policy as a result of:

- Abandoned properties causing loss of rental income
- Shuttered properties having a detrimental effect on the appearance of the estate
- The abandonment process not being followed correctly, leaving the Association liable to litigation on the grounds of wrongful or illegal eviction.

- 5.2 Given the importance of these risks the effective management of this policy is vital.

## **6 Responsibility**

- 6.1 Housing Officers have responsibility for the implementation of this policy. Housing Officers have responsibility for:

- carrying out tenancy management visits and investigating any possible cases of abandonment
- liaison with other service providers, including the local authority, to investigate thoroughly the whereabouts of any tenant who may have abandoned their tenancy
- dealing with problems associated with tenancy abandonments
- dealing with tenancies where one tenant has left the property and effectively abandoned the tenancy

6.2 The Senior Housing Officer has responsibility for: -

- monitoring the performance of staff
- monitoring the operation of the policy, reporting to the Housing and Property Services Sub-Committee (H&PSSC) and assisting the Housing Services Manager with the review of the policy
- maintaining the abandoned property register

## **7 Duty to Occupy the Property**

7.1 Under the terms of the tenancy agreement, tenants have a duty to occupy their home. A property which lies empty is a waste of public resources as well as being at risk to vandalism. The Association will attempt to ensure that properties are occupied by tenants.

7.2 An abandoned property is one which is unoccupied and where the tenant has no intention of occupying it as their only or principal home. The following lays down the Association's policy in response to an abandoned property.

7.3 Before determining whether the property has been abandoned the Housing Officer will make strenuous efforts to locate the tenant, confirming that the property is empty and that it is the intention of the tenant not to occupy the property.

7.4 If the property is insecure the Association will ensure that the property is made secure and will attempt to notify the tenant that the property has been re-secured.

## **8 Investigations**

8.1 When a Housing Officer suspects a property is abandoned they should in the first instance, carry out preliminary investigations to determine if the tenant is or is not, occupying the property. It is important that the Housing Officer records the details of these investigations and other relevant information on the abandonment checklist form.

8.2 Examples of preliminary investigations are as follows: -

- Have the keys been returned?
- Letter sent offering office appointment
- Is mail accumulating, being collected or redirected?
- Calling cards left at tenant's property
- Are there any personal possessions in the property?
- Are there any external gas/electricity meters? Take readings and re-visit to see if supplies are being used
- Consulting neighbours - When did the neighbours last see or hear the tenant?
- Phone Calls to tenant and/or members of household
- Check Rent Account - Is the rent being paid and are there any arrears?

- Last Repair ordered
- Check with any next of kin or emergency contact previously provided by tenant
- Housing Benefit or DWP information
- Is the tenant still claiming Housing Benefit or DWP benefits?
- Is the tenant still registered for Council Tax?
- Have any other agencies such as Social Work or Education had any contact with the tenant(s)?
- Have the tenant's children changed schools?
- Has the tenant made a homeless application?
- Is the tenant in custody or been reported missing?
- Is the tenant in hospital?

8.3 Before issuing the Abandonment Notice the Senior Housing Officer / Housing Services Manager must be satisfied that all appropriate checks have been carried out.

8.4 The Housing Officer must keep a detailed record of all enquiries and of any actions taken after completing its investigation, for example a log of house visits, phone calls and letters etc. All entries must be clearly signed and dated by the relevant officer. The length of each investigation will be dependent on the circumstances of the case until the Housing Officer is satisfied, based on the evidence and information gathered, that the tenant has abandoned the property. The Association must be able to demonstrate its enquiries were sufficient and reasonable in the circumstances.

## 9 Abandonments in Scottish Secure Tenancies

9.1 The Housing (Scotland) Act 2001 makes statutory provision for a procedure to end a tenancy in the case of an abandoned property without going to court.

9.2 Section 17 of the Act gives Cloch Housing Association powers to deal with properties it believes are abandoned including:

- Entering the property **at any time** in order to secure the property, fittings, fixtures or furniture against vandalism;
- To facilitate this the landlord may force open doors and locked places such as windows, outhouse and cupboards;
- Proceed with repossession action under section 18.

9.3 The statutory abandonment procedure in Sections 17-21 of the Housing (Scotland) Act 2001 (the Act) must not be used to coerce tenants to contact the Association, for example to discuss rent arrears or because they have failed to allow access for gas servicing. This is an improper use of the procedure and opens the Association to an accusation of acting unreasonably.

9.4 If there is doubt that the property has been abandoned but the tenant is not occupying the property the Housing Officer should use a Notice of Proceedings for Recovery of Possession (NOP) for rent arrears or any other breach of the tenancy in accordance with the Association's Legal Action and Eviction Policy. It

may be more practical to issue an NOP to a tenant for not using his or her property as their principal home and raise proceedings at the end of the notice period after 28 days.

- 9.5 If the Housing Officer is satisfied that the property has been abandoned the Act calls for the service of 2 notices, one giving 28 days' notice in writing of the intention to end the tenancy, the second notice bringing the tenancy to an end following the initial 28 day period.
- 9.6 Service will be by delivery through the letterbox by the Housing Officer witnessed by another member of staff.
- 9.7 If no contact is made by the Tenant and continued efforts to gain information regarding their whereabouts or intentions are unsuccessful, the tenancy will end at expiry of the notice. Entry will be forced and witnessed by the Housing Officer who will take a full inventory of the tenant's property on the premises and the condition of the property.
- 9.8 The property will be cleared of all belongings and locks changed. The property will be re-let as soon as possible. If the value of the tenant's property exceeds the cost of storage and any arrears owing, it will be stored for 6 months; if the value is less than this all belongings will be disposed of as soon as is practicable following service of the 2<sup>nd</sup> abandonment notice and recovery of the property. Notice shall be served on the tenant, by recorded delivery if necessary, that their property is available for delivery to them on payment of the expenses incurred in dealing with the property.
- 9.9 If the Tenant makes contact within 6 months from the end of tenancy, they may show good cause for not making contact within the 28 days and their continuing intention to occupy the property in which case they may be reinstated as the Tenant. In practice if the property has been re-let, this may mean that an alternative let may be offered. They will be informed of their right to appeal to the court within 6 months of the repossession if this is refused.

## **10 Serving Notice**

- 10.1 Following completion of the preliminary enquiries and where the Housing Officer believes that the property has been abandoned, then an "Abandoned Property Notice" will be served on the tenant(s) at the address of the property. This Notice will;
- state that the Association believes the property is unoccupied and that the tenant does not intend to occupy it as the tenant's home
  - require the tenant to write to the organisation within 28 days of the notice being served advising that the tenant intends to occupy the property as the tenant's home – this should either be hand delivered to the Associations office or sent recorded delivery for proof of compliance
  - advise the tenant that, at the end of the 28 days, if it appears to the organisation that the tenant does not intend to occupy the property, the tenancy will be terminated immediately

- 10.2 The Notice will be hand-delivered at the tenant(s) address, and another officer will witness this from the Association (Two officers from the Association must be present when serving this notice). If the Association has information about where the tenant may be living, a copy will also be sent to that address.
- 10.3 A copy of the Notice will be kept with the Abandonment Checklist and a copy should be provided to the Allocations team to prepare to allocate the property should it become vacant. At this stage the Housing Officer will update the Association's IT system, notify the Allocations Team by giving a copy of the Notice and diarise the date for the 2nd Notice to be served (28 days after service of Notice 1). The alert or "pop up" system on the Association's IT system should also be used to state that abandonment proceedings have commenced and should there be any contact then the Housing Officer should be notified. The Housing Officer will also advise Housing Benefit or the Department of Work and Pensions that an abandonment notice has been served, where appropriate.
- 10.4 During the 28-day period following the serving of Notice 1, the Association will continue to make sufficient enquiries to be satisfied that the property is unoccupied and the tenant does not intend to occupy it as the tenant's home. These enquiries will be similar to that noted in 8.2 above.
- 10.5 Where the tenant contacts the Association within the 28 days, either verbally or in writing, of their intention to occupy the house as their home, the abandonment procedure will be cancelled. This should be followed by a home visit to confirm that the tenant is living in the property and to confirm the reason for their absence.
- 10.6 Where the tenant returns to live in the property but fails to advise the Association either verbally or in writing, the abandonment procedure will be cancelled. The Housing Officer will visit the tenant as soon as possible to discuss the situation. If we believe that the property is not being used as the tenants only or principle home, we will issue a Notice of Proceedings for eviction based on these grounds.
- 10.7 At the end of the 28 days' notice, the Association will serve a further notice Abandoned Property – Notice 2 terminating the tenancy with immediate effect, if it remains satisfied that the property is unoccupied and the tenant does not intend re-occupying it as the tenant's home. This Notice 2 will be served in the same way as Notice 1 with another officer being present (Two officers from the Association must be present when serving this notice). In addition, the Association will arrange for the Police if necessary and a joiner to be present to force entry to the premises and change the locks – the cost of this is to be recharged to the tenant. If necessary, security for the property should also be arranged with the Property Services Section.
- 10.8 The Housing Officer(s) who force entry will take an inventory, on the specified form, of each room and take digital photographs of any goods found in the property or damage done to the property. Once the inventory has been completed and quantified a recommendation regarding storage or disposal will be made to the Senior Housing Officer or Housing Services Manager as per Section 12 of this policy.

10.9 On return to the office, the Housing Officer will do the following:

- Complete an Inventory of any belongings left in property;
- Download/print photographs and discuss possible storage of property with SHO/HSM as per section 10 of this policy;
- Pass new set of keys to the Property Services Section giving instruction for storage, disposal, shuttering etc.
- Provide Allocations Team with a copy of Notice 2 and arrange for tenancy to be terminated on the Association's IT system;
- Scan/file all paperwork in the tenants file

10.10 On receipt of Notice 2 the Allocations Team will terminate the tenancy with immediate effect, and commence the void management procedure.

10.11 Should the tenant return and make contact after the second notice is served and the tenancy terminated then the Association must decide:

- Whether the abandonment was served in error and the tenant has reasonable grounds to challenge it. In this case the Association may, at the Housing Services Managers discretion, offer the property (if it is still un-let) or an alternative property to the tenant but must create a new tenancy as the original tenancy has been terminated. The allocation would be made as a Management Allocation in cases of this type.
- If the Association decides that the abandonment was served correctly and in fact the tenant had abandoned the property, then they can request that the tenant has to reapply on the housing list. However, legal advice on the abandonment should be sought before making such a decision.

## **11 Abandonment by a Joint Tenant**

11.1 The Association will use provisions contained within Section 20 of the Housing (Scotland) Act 2001 to bring to an end the interest of a joint tenant where the joint tenant appears to have abandoned the joint tenancy.

11.2 Where a joint tenant has abandoned the joint tenancy and after making enquiries, the Association is satisfied that they are not occupying the property and do not intend to occupy it as their home, the Housing Officer may end their interest in the tenancy by the service of two notices as detailed in Section 8 above.

11.3 Having served on the tenant a notice and having made ongoing checks to satisfy that the tenant has abandoned the tenancy the Association may at the end of the 28 days' notice period serve a further notice bringing the interests of the tenancy to an end with effect from the date specified in the notice. This date cannot be earlier than 8 weeks after the date of service of the notice

11.4 The Association in serving a notice on the abandoning tenant must also serve a copy of the notice on each of the other joint tenants.



- 11.5 Where a joint tenant is aggrieved by this action, they will be informed of their right of recourse to the court. The Association will comply with any order of the court.
- 11.6 The Senior Housing Officer will keep a record of abandoned properties. Details will be reported to the Housing & Property Services Sub-Committee (H&PSSC) for their information.
- 11.7 The remaining tenant(s) will simply continue as tenant(s). The tenancy does not end but the tenancy details are amended to show that the abandoning tenant has ended as part of both the tenancy and the household and is no longer attached to that tenancy. Any debts remain on the account and are recoverable from the remaining tenant(s).

## **12 Property Found in an Abandoned Property**

- 12.1 Cloch Housing Association will store property for 6 months after the tenancy has been terminated unless the value of the property is less than the costs to the organisation for storing it as well as any outstanding rent arrears owed by the tenant.
- 12.2 Where property is found in an abandoned property, the Association will immediately serve a notice on the tenant that the property is available for delivery into the hands of the tenant. This notice complies with the Scottish Secure Tenancies (Abandoned Property) Order 2002. The notice gives the tenant 28 days to collect their property. If the property is not collected the Association can make a decision on expiry of the 28-day notice to dispose of the goods or arrange to store personal property of the tenants' for up to six months, providing that the storage costs along with any rent arrears are not greater than the value of the goods.
- 12.3 The Association will charge the tenant any costs in respect of storage of the goods before they are delivered to the tenant. Where the tenant has not arranged for delivery of the goods prior to the expiry of the six months' period, the Association will be authorised to dispose of such property.
- 12.4 Prior to this disposal or storage, the Senior Housing Officer or Housing Services Manager should sign off the inventory and authorise any action.
- 12.5 Should the tenant or any other person who appears to have a right of ownership or of possession in the stored property request for its return, then the property will either be delivered or otherwise granted to the person upon receipt of a payment equal to the amount incurred in storing the property (or a lesser amount at the discretion of the Senior Housing Officer or Housing Services Manager). After the period of storage or indeed if the property is not of significant value as outlined in 10.1 above, the Association can either sell or dispose of such items. Further guidance on this is available in ***The Scottish Secure Tenancies (Abandoned Property) Order 2002 – Statutory Instrument 2002 No. 313.***
- 12.6 The Associations' IT system will be updated to refer to whether property has been found, and detail whether this has been stored or disposed of. The

inventory of items will detail what this property was and will be scanned / filed in the tenant's files.

#### 12.7 Register of abandoned property

The Association must keep a register of properties that have been repossessed under Section 18, in which property has been found. In practice, almost all abandoned properties are likely to have some items and the register should therefore list **ALL** abandoned property. The property must remain on the register for 5 years and the register must be open for public inspection at all reasonable times.

### **13 Charging the Tenant for Repairs and Storage Costs**

13.1 The tenant should be charged for the costs of any repairs that are rechargeable under the Reactive Repair, Void and Rechargeable Repair Policies and Procedures.

13.2 The cost of removal and storage for property found in the abandoned property should be charged to the tenant and pursued as per the Rechargeable Repairs Policy and Procedures.

13.3 Any Former Tenant debt or other debts should be pursued as per the Arrears Policy.

### **14 Tenant's Recourse to Court**

14.1 Under Section 19 of the Housing (Scotland) Act, a tenant who is aggrieved by the termination of the tenancy under Section 18(2) may raise legal proceedings within 6 months after the date of termination of the tenancy.

### **15 Appeals and Complaints**

15.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure.

### **16 Reporting**

16.1 Regular reports, at least annually, will be provided to the H&PSSC informing them of: -

- The number of abandonment notices issued
- The number of abandoned properties recovered
- Details of any issues that may require to be considered for policy or procedural change

- Information (without disclosing personal details) about any tenant who formally initiates a right of appeal under Section 19 or 21 of the Housing (Scotland) Act 2001 - Tenants recourse to court/Joint tenancies - abandoning tenant's recourse to court

## **17 Equalities Commitment**

- 17.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 17.2 The Association seek to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

## **18 Review**

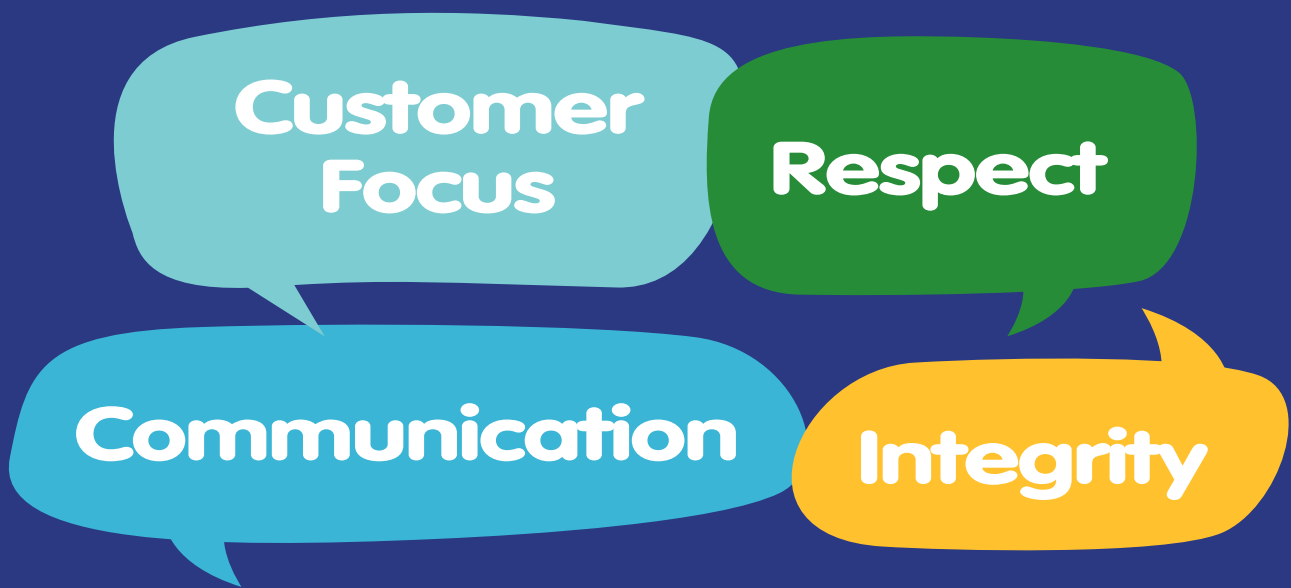
- 18.1 This policy will be reviewed every *three* years or as required to assess its effectiveness and to consider any changes required in the light of experience, new guidance, good practice, and legislation.

## **19 General Data Protection Regulations**

- 19.1 The Association will treat all personal data in line with our obligations under the current General Data Protection Regulations and our own Data Protection Policy and Data Retention Procedures. Information regarding how your data will be used and the basis for processing your data is provided within our Fair Processing Notice.

## **20 Policy Availability**

- 20.1 This policy is available to the public on the Association's website. Copies are also available on request and free of charge from the Association. This policy can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.



CLOCH HOUSING ASSOCIATION LTD	
<b>Policy Name</b>	Abandonment Policy & Procedure
<b>Policy Category</b>	HM
<b>Policy Number</b>	040
<b>Date Adopted</b>	01/06/2014
<b>This Review</b>	15/09/2020
<b>Next Review</b>	September 2023
<b>Equalities Impact Assessment Required</b>	No
<b>Link to other policies</b>	Tenants Handbook, Anti-Social Behaviour
<b>Consultation</b>	Not Required - Legislation
<b>Need for Procedure</b>	Yes – Contained in Policy