# Owners Debt Recovery Procedure

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## 1. Introduction

Cube Housing Association is a registered property factor (Property Factor registration No PF000308).

Factors are bound by the Property Factors (Scotland) Act 2011 and Code of Conduct for Property Factors ('the Code'). It is a requirement of the Code that Property Factors have a written procedure for debt recovery. This document fulfills that requirement. Here we set out how we will collect income, manage arrears and recover any debt incurred.

## 2. Debt prevention

We are committed to taking a pro-active, preventative approach to customer debt. This involves a range of measures aimed at helping customers manage their payments, and early, pro-active communication with customers about their arrears.

Our preferred customer payment method is Direct Debit as it minimises the risk of arrears. If this payment method is not suitable, others are available.

If you are concerned about falling into arrears and get in touch, we can signpost you to sources of free and independent money advice.

## 3. Disputing a bill

Any disputed items on a bill should be raised with us within one month of receipt of the bill. Other items on that bill and other bills from us should still be paid by the due date while we investigate any disputed items. We will not carry out any other recovery action on the item being disputed while we investigate. You are still responsible for paying all other monies owed during the investigation. We will notify you of the outcome of our investigation when it has completed.

In line with the Code of Conduct for Property Factors, if a case relating to a disputed debt is accepted for investigation and referred to the First-Tier Tribunal (FTT) we will not apply any interest or late payment charges in respect of the disputed items during the period that the Tribunal is considering the case.

## 4. Debt recovery steps

If a customer enters arrears by failing to make payment of monies owned by the due date as stated on the bill, we will aim to take the following steps to recover these monies:

| Steps |
|---|
| 1. First reminder letter is issued from the day after payment is due |
| 2. Within seven days of the amount being due, we will contact the customer to discuss payment. This may be by mail, email, phone, and/or text. We may also arrange to make home visits if other contact methods fail to ascertain if additional help is needed. This contact may be made by our in-house debt recovery team who will attempt contact via telephone, email, text, and up to two letters. |
| 3. We will offset arrears with any credits or deposits (see below for detail) in a customer's repair or common charge accounts. We may also consider lodging a notice of potential liability for the monies owed with the Registers of Scotland. |
| 4. If payment in full has not been received, or a payment arrangement for recovery of the debt has not been sustained, the debt will be prepared for legal action. |
| 5. Debt recovery is pursued through legal action and a letter titled 'Notice of Court Action' is issued informing the customer of this intention. |
| 6. Optional services are reviewed and may be withdrawn from the customer in debt |
| 7. Common services to a block or development may be reviewed and withdrawn. |

If you are unable to pay monies owed in full, dependent on the sums involved and your ability to pay following an income and expenditure check, we will, on a case-by-case basis, consider offering you a short time to pay as part of a debt recovery strategy.

If you make an arrangement to pay your arrears you are expected to sign up to make payments by Direct Debit unless you can demonstrate reasonable grounds for not doing so in favour of a different payment method. In these circumstances other options for payment of the debt may be available.

To prevent escalation of your debt to legal recovery action which can incur additional costs, we may, where appropriate use any credits in your common charge or repair accounts to cover all or part of the monies owed in another of your accounts. If you have multiple properties receiving a factoring service, we may look across all your accounts to identify credits that would offset monies owed. We will only carry out this exercise after attempting to make contact with you to discuss your arrears. We may also use your deposit to offset arrears. We will not offset debt in your improvement account this way, or transfer any credit in your improvement account to pay monies owed elsewhere.

The steps detailed above are our normal practice, however, in some circumstances, such as when a property is about to sell, we will seek to recover monies owed more quickly.

At any point after Step two we may consider lodging a notice of potential liability (NOPL) for monies owed with the Registers of Scotland. This warns any prospective purchaser that there is an outstanding liability for which they would become liable if it is not settled by the seller. The purchaser has a right of recovery against the seller. There is no requirement for court proceedings to have been taken first. We will notify you in writing if we are taking this action and that the cost will be applied to your account.

## 5. Debt recovery through legal action

Legal action is generally undertaken only as a last resort. No legal action will be taken without reasonable steps being taken in advance. Prior to legal action being taken we will give notice of our intention by sending you a letter titled 'Notice of Court Action'.

Legal action to recover debt involves pursuing debt though court to secure a decree or sequestration. You should note that securing a decree could result in the following enforcement action being taken:

- Registering an Inhibition to prevent the selling or re-mortgaging of a property without paying the debt
- Earnings arrestment
- Bank account arrestment
- Rent or other income arrestment

- Attachment or Exceptional Attachment Orders
- Any other legal process for enforcement of decrees

Court expenses will be incurred and recovery pursued against debtors where a decree is obtained. The cost of enforcement of decrees will also be pursued once the debt is escalated for recovery through legal action. We may also apply interest to debts in line with your Title Deeds.

In addition, we may withdraw optional services from you until payment in full is made. Specifically we may withdraw provision of home contents insurance and internal repairs until monies owed are paid in full. In this circumstance, we will inform you by letter and the date from which it will apply, normally 14 days after a letter is issued.

## 6. Joint liability and withdrawal of services to all customers in a block or development

Under the Tenement (Scotland) Act 2004, property factors may, depending on the Title Deeds, hold all owners jointly liable for the debts of some owners within the block who fail to meet their obligations. We do not currently pursue other homeowners within a block for one homeowner's debt.

However, we may withdraw common services provided within the block until we receive the full amount owed for factoring the block. Where total monies owed in a block amount to the equivalent of two years' management fee for that block we may review common service provision. In these circumstances we will write to all homeowners affected about debt levels in the block and that service provision is being reviewed, including timescales for this review. The review will consider patterns of non-payment, homeowner engagement with the debt recovery process and likelihood of recovering the debt.

Once a review has been carried out, we will write to inform all affected homeowners of the outcome. If the outcome is to partially or fully withdraw service provision to the block, we will arrange a Proprietor's meeting within 28 days to discuss that outcome. After that meeting with homeowners if we decide to proceed we will give all affected homeowners 28 days' written notice of intention to withdraw services, or follow the timescales set out in the Title Deeds if these are different.

## 7. Ending the factoring agreement

When you sell your factored property, or you and your neighbours decide to stop receiving some or all of our services, you remain liable for any debts you have incurred. On being informed of the circumstances above, we will:

- Conduct a full debt check and, if a debt is identified, seek full and final payment immediately.

- Provide any supporting documentation where appropriate.
- Refund credits (after deductions for any monies owned).

When a factored property sells we will undertake debt recovery actions against former customers where necessary. In circumstances where there are current court actions for debt recovery we will continue to engage with you until proceedings have concluded. We will review the case throughout its duration and may alter any planned actions.

Where a customer dies with monies owed, or arrears build up after a customer dies but ownership passes to another individual, the estate of the customer who has died will be held liable for any debts. We will seek to recover any monies owned from the estate of the deceased customer.