

ARHM GOOD PRACTICE NOTE

DEBT RECOVERY

It is in the interest of all parties that all payments due in accordance with the lease, including ground rent and service charge payments, are made on a timely basis. If payments are not made it can affect the cash flow of the scheme, and this can affect the ability of the landlord/managing agent to fully undertake their responsibilities.

Debts may accrue as a result of one or more of the following:

- Failure of the landlord/managing agent to monitor and act early in response to missed payments
- Change in a leaseholder's personal circumstances resulting in difficulty paying charges due
- Dispute with the landlord/managing agent
- On death/inheritance

Overview

- A landlord / managing agent should have an established policy and procedure for the collection of ground rent and service charge payments, which includes the action to be taken to recover arrears.
- The invoicing of ground rent and service charges should be undertaken as per the lease and any management agreement.
- Notice under s48 of Landlord & Tenant Act 1987 should be sent to new leaseholders on acquisition of their property to formally notify them of the Landlord and any Managing Agent. Failure to do this may render charges irrecoverable.
- Details for the leaseholders' next of kin should be taken and kept on file.
- Landlords / managing agents should work to prevent arrears and to avoid taking legal action if at all possible. Early identification of debt and contacting leaseholders as soon as a debt occurs are key.
- There are a number of formal and informal avenues that can be taken to claim back ground rent and service charge arrears.
- The usual route for collecting debt from leaseholders is through an agreed repayment arrangement or, failing that, the Small Claims Court process through Money Claims On Line (MCOL).
- A pre-court action protocol, as issued by The Ministry Of Justice, encourages more contact between landlords/managing agents and leaseholders before cases are referred to court. Courts will take this into consideration when deciding on an order to be made and if court costs should be awarded.

- Leaseholders should be offered support if they are facing financial difficulties impacting on their ability to pay their ground rent or service charges. Support could include advice from an in-house financial inclusion service, or referral to benefits advice agencies.
- Landlords / managing agents should not rely solely on letters to inform Leaseholders of their arrears. These should be supplemented by face to face contact, telephone, email and text messages. The Scheme Manager who will be familiar to the leaseholder could be involved in supporting this process by discussing the issue and identifying any support that could be provided.
- Mediation through formal or informal routes should be offered in all cases to seek to resolve any disputes prior to any legal action.

Debt Recovery Process

- The landlord's rights should be reserved fully by letter sent as soon as a payment due has been missed. The first letter should specify how long will be allowed for payment prior to further action being taken.
- Account should be taken of the particular circumstances of each case; only the leaseholder is liable for the service charge payment.
- If possible a visit should be made to the leaseholder as early as possible in the process.
- Where contact is made, agreement should be sought from the leaseholder to pay the outstanding debt to prevent any further action. If the leaseholder is in financial difficulty and cannot afford to pay the debt in full, a repayment arrangement to reduce the debt in instalments should be agreed.
- All information relating to arrears actions should be recorded. This information can be included in particulars of claim if applications are made to court so it's essential that comprehensive and accurate records are kept.
- Where arrears have not been cleared and no repayment arrangement agreed, and there is a mortgage on the property, the mortgage lender should be given the opportunity to repay the debt. The leaseholder should always be given prior notice that this will happen and a further opportunity to clear the arrears prior to contact with the mortgage lender.

Proceeding to Small Claims Court

- Before deciding to make a small claims application, the landlord/managing agent will need to establish if there are any outstanding service charge disputes. If the leaseholder defends the claim, the County Court will expect the case to be heard before a judge and if there is an outstanding or ongoing dispute the judge will likely order referral to a First Tier (Property) Tribunal (FTT).
- The pre court protocol should be followed by inviting the leaseholder to complete the paperwork and issuing the letter before claim.
- The Money Claims on Line (MCOL) service has lower court fees and also allows tracking of

claims on-line. The fee for using MCOL is dependent on the amount being claimed.

Small Claims Repayment Arrangements.

- Once the outcome of the small claims decision is known and a money judgment has been awarded, an adjournment may be awarded for the debt to be cleared in instalments, details of the arrangement should be included in a confirmation letter to the leaseholder.
- If the arrangement is breached, or no arrangement made, further enforcement action may take place through the court.

Enforcement

- The types of enforcement that should be considered are as follows:
 - Attachment of Earnings Order for leaseholders who are working – is sent to the leaseholder's employer. It tells the employer to take an amount from the homeowner's earnings each pay day and send it to a collection office.
 - Charging Order – a charge is added to the property to the value of the debt which means that when it is sold the monies are paid back as part of the sales process. A sale cannot complete without this. This secures payment of the debt; however it may mean a delay before the debt is cleared.
 - Forfeiture - Forfeiture is the termination of a lease agreement with immediate effect and without any financial compensation to the leaseholder. This is used only in extreme cases and as a last resort.

Forfeiture

- The forfeiture process is commenced through the service of a Section 146 (Law of Property Act 1925) Notice, setting out the breach and giving the leaseholder time to remedy that breach.
- The Notice may only be served if the amount outstanding has been admitted by the leaseholder, or ordered by a Court; and the debt must be in excess of £350 or all / part of the debt outstanding for longer than 3 years.
- Forfeiture proceedings must include any mortgage lender of the property.
- Relief from forfeiture can be determined by the court allowing the leaseholder to stay in the property and repay the debt.
- The Court can also determine that the leaseholder can recover funds from sales proceeds after the landlord has taken possession and repaid the debt and any associated administration costs.
- The ARHM Code of Practice requires that where forfeiture action is granted by a court, the landlord repays the value of the forfeited lease to the former leaseholder and others with a legal interest in the lease, subject to deduction of costs and expenses incurred in taking forfeiture action. These costs may include, but are not limited to, legal and management costs in taking forfeiture action had the lease not been forfeited, up to the point of forfeiture.

Death / Inheritance

- Payment of Service Charges is the responsibility of the Estate of the deceased until a lease is assigned.
- The landlord / managing agent should contact the next of kin / family of the deceased leaseholder to notify them of the charges and to determine the Executor of the Estate.
- The landlord / managing agent may consider accepting an undertaking to discharge ground rent and service charge arrears on proceeds of sale. Some or all of the following conditions may be attached:-
 - The landlord / managing agent is satisfied that there is sufficient equity in the property after loans and mortgages have been paid off.
 - Any undertaking will have a long stop date after its acceptance, following which the matter will be reviewed.
 - There is an agreement to pay interest on the debt, as provided for in the lease.
 - The landlord / managing agent is satisfied that the property is being actively marketed.
- The landlord /managing agent may wish to consider taking a legal charge over the property to secure the arrears which may then be permitted to accrue until sale.

DISCLAIMER:

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