



Proposal regarding the Making of a Property Factor Enforcement Order

**Following Upon a
Decision of the Homeowner Housing Committee
In an Application under section 17 of the Property Factors (Scotland) Act 2011**

By

1. John and Dorcas Bainbridge, 52 Hawk Brae, Livingston, West Lothian EH54 6GE
2. Patricia Quin, 100 Hawk Brae, Livingston, West Lothian EH54 6GF ("the Applicants")

Property Factor: Be-Factored Ltd, 2a North Kirklands, Eaglesham Road, Glasgow G76 0NT ("the Respondent")

hohp Ref: HOHP/PF/15/0118 & 119

Re: 52 and 100 Hawk Brae, Livingston, West Lothian ("the Properties")

Committee Members:

John McHugh (Chairman) and Susan Shone (Housing Member).

This document should be read in conjunction with the Committee's Decision of the same date.

The Committee proposes to make the following Property Factor Enforcement Order (“PFEO”):

“Within 28 days of the date of the communication to the Respondent of this property factor enforcement order, the Respondent must:

1 Make no further demand for payment of sums from the Applicants. The Respondent should treat the Applicant’s accounts as having a nil balance. This will be without prejudice to any obligation on the part of the Respondent to apply any credits or to make any payments to the Applicants’ accounts.

2 Provide to the Applicants a document containing a full accounting reconciliation of all intromissions by the Respondent with funds relating to the Development during the final 12 months of its acting as property factor.

The reconciliation document must be accompanied by a copy of all financial records relating to the Development and, in particular, should include all invoices (paid or unpaid), all receipts and all bank statements. It should include opening and closing balances.

The reconciliation document must be accompanied by a certificate signed by a chartered accountant who is independent of the Respondent. The certificate should confirm the name, contact details and professional qualifications of the accountant. The certificate should contain confirmation by the accountant:

a) that he has been provided with: (i) a copy of the Committee’s Decision and the PFEO and (ii) a copy of all invoices, receipts, accounts, bank statements or financial records which he reasonably requires; and

b) that he is reasonably satisfied that the reconciliation presents an accurate record of the Respondent’s handling of the funds relating to the Development.

3 Provide to each of the Applicants a separate statement of account particular to that Applicant showing the opening balance, all payments received by the Respondent from the Applicant, all charges levied or other credits applied to the Applicant’s account and the remaining balance.

4 Provide a copy to the office of the HOHP of all documents produced in satisfaction of paragraphs 2 and 3 of this PFEO together with confirmation that the accounting adjustments required by paragraph 1 of this PFEO have been made.”

Section 19 of the 2011 Act provides as follows:

“...(2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so--

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to them.

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order...”

The intimation of the Committee's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the Homeowner Housing Panel's office by no later than 14 days after the date that the Decision and this proposed PFEO is intimated to them. If no representations are received within that timescale, then the Committee is likely to proceed to make a property factor enforcement order without seeking further representations from the parties.

Failure to comply with a property factor enforcement order may have serious consequences and may constitute an offence.

JOHN M MCHUGH

CHAIRMAN

Date: 4 February 2016