Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003

Written submission from Elizabeth Smith

Case Study

My husband and I own two flats at Broomhill Court Stirling. The development was called Douglas Walk Stirling. The factors appointed by Stewart Milne are Hacking and Paterson.

Titles

Under the titles Stewart Milne has the power to appoint a Property Management Company for the first 5 years after the date of entry of the last house and flat in the development. There appears to be no provision for home owners to be told when this is or what their options are then. In our case Hacking and Paterson said they were not sure when this was. The developer has the power to fix the Property Manager's remuneration for this initial period. Hacking and Paterson chose to increase their fees every year and could not provide paperwork to support this.

There is a restriction under the titles that only members of the Property Managers Association Scotland Limited can be appointed.

The owners of the 24 flats within the development require two thirds of all of the owners within the whole development to agree to change the Property Management Company.

Problems

The flat owners have had problems with the services of Hacking and Paterson. The titles make provision for the home owners to make decisions. Hacking and Paterson do not always act on the owners' instruction. We have submitted a complaint to the Home Owners Housing Panel regarding several issues. Your committee may be interested in the findings of this. Of particular interest is the reply from one of the directors of Hacking and Paterson stating that the deed of conditions is, in their opinion, binding on the homeowners not the factors.

As you may be aware the HOHP have not yet published any decisions on their website. Owners may be put off using this panel because complaints must refer to the legislation and the terms and conditions the factors issue. This is quite a time consuming process. According to the information guide on their website the homeowners housing panel have no power to interfere with the service provision and fees charged by factors. As you may know Charles White just increased their fees by 5% for owners. We are just waiting to see how much Hacking and Paterson are going to increase their fees by.
In practice it is highly unlikely that the flat owners will ever manage to change the factors given they need the agreement of the house owners as well in order to achieve the required two thirds.

It also seems unfair that owners are prohibited from being able to manage their own block of properties should they choose to do so or being able to choose any registered factor.

**Solution**

The only solution to ensuring homeowners will ever be able to change factors easily would be to have far smaller units enabled to make decisions. In our case it would be great to have just a majority of the owners of the 24 flats at Broomhill Court Stirling allowed to make decisions. Possibly factors should be required to meet owners at least every year. That way they might hear what owners think of their ever increasing fees which owners are powerless to do anything about.

If developments were split into small sections factors would have to improve their services, be competitively priced and realise that they cannot dictate unfair terms and conditions to homeowners. Until this happens homeowners beliefs that “one factor is as bad as the other” may continue to be correct.

Elizabeth M Smith
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