Justice Committee

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

Written submission from Trinity Factoring Services Ltd

I am the managing director of Trinity Factoring Services Ltd; an Edinburgh based property management company looking after around 7500 properties in 175 developments in various parts of Scotland.

General

Whereas it was impossible for some groups of owners to change factors at all because the developer had appointed a particular firm in perpetuity, we welcomed the limit of such an appointment to 5 years or 3 years in the sheltered or retirement sector) (or the sale of the last property if sooner) (S63).

To an extent therefore, it cannot be argued that the Act is a barrier to changing factor – indeed it is an enabling Act in this respect. It is certainly the case that many more owners are aware that it is not difficult to change property factors if there is a majority seeking such a change.

In sheltered housing the Act specifies that a majority is two-thirds (S54). It is not easy to obtain the express agreement of two thirds of owners. Let us take a development of 30 flats. At any one time, a few owners may be temporarily in hospital; may be unable to deal with their affairs and contacting any attorney or family member may be difficult; some may be on holiday; some elderly residents will not be the owners of the flats. It is common for family members, trusts, siblings to own the sheltered property. If you then discount those who have no interest in selecting the manager, the difficulties in achieving 20 express consents to satisfy the two-thirds requirement can be readily understood. However it also means that a vote taken one week which secures, in this example again, exactly 20 votes, cannot be easily reversed by one or two changes of mind. A 50% majority is always subject to repeated votes and the two-thirds leads to an element of substantiveness in the decision and therefore cohesion and acceptance of the decision in the community.

However the Act does not specify who are owners in the retirement sector. While one might think this to be obvious, should the owner of the resident manager’s house be entitled to a vote? It is likely that it is owned by the developer or the current manager; each of whom may have a vested but inappropriate. I would suggest a variation to S54 to make it clear that only the owners of those flats or houses which are restricted to retirement or sheltered accommodation by their title conditions comprise the electorate.

S54 of the Act provides that a majority, for the purposes of S28, shall in the retirement sector be two-thirds. As explained above I consider this to be good for the dismissal of a current factor or manager. However because of the wording, this two thirds definition also applies to the appointment of a factor. If two-thirds have dismissed a factor, why does it require two-thirds to agree who should be the new
factor? If there is a choice of prospective new factors, two-thirds may never be achieved. A simple majority is all that is required.

Consultation points

1. No.
2. Yes.
3. The Act has gone a long way to allow owners of related properties much greater say in the way in which the properties are managed. Allowing local authorities and housing associations to dictate such terms for 30 years seems to allow or encourage the opposite and cannot be justified. The owners in the majority should be in control. This is increasingly important now that some housing associations are also operating as property manager firms in developments which may have at one time have been partly or fully owned by the same or another housing association. Thus in effect a monopoly can be created and could be abused.
4. No knowledge.
5. It is possible that this could lead to an abuse of power but if it is accepted that the owners should be in control, and a local authority owns half, why should they be treated differently?

It should also be noted that such an abuse of power is not necessarily limited to the owner of a majority of units. A real example, in Aberdeen, is where the original factors have taken, on appointment, heritable ownership of the resident wardens flat, a guest suite and the manager’s office on appointment. Following their dismissal (by a two thirds majority) they can refuse access to these 3 facilities for the new managers; or seek to charge an unreasonable rent through the new managers to the owners. If the Parliament is seeking to control the activities of land management companies, similar legislation should be considered for owners of facilities within retirement developments which are essential for the effective running of that development.

6. My experience is that the public knowledge of the legislation has considerably raised the number of developments who are choosing to change factors; and this is good for the communities involved; should raise standards in the industry and lead to greater competition amongst property management firms. Since the appointed date I would estimate that to our knowledge over 100 developments have changed manager using the legislation.
7. The problem of land owning maintenance companies providing a poor service remains a problem and I am sure that there are many groups of owners who would like to able to dispense with the current owner/manager. The only solution we can offer is a system of compulsory purchase where two thirds of the affected house/flat owners agree and compensation is paid to the land owning management company; at a figure set by the District Valuer and contributed by the householders. This would be comparable to compulsory purchase to enable public works and also to the buying out of highland estates also enabled by the Scottish Parliament.
8. No knowledge.
9. No knowledge.
10. Many owners considering such action have said to me that it is far too much trouble to go to the Land Tribunal and also too risky and expensive. Perhaps an agreement by two-thirds of the owners and recorded by the Keeper against the
titles involved would be easier and less expensive while still safeguarding the interests of the minority.

**Additional item**

The Justice Committee may also care to consider the position where owners cannot agree about the use of a specified space which is mutual. Currently if the residents lounge is owned heritably by the owners of the flats within a development; then any one owner can, as a part owner, dictate what activities can and cannot take place in that space – even to override the wishes of all other owners. This is iniquitous and is not how mutual ownership of a facility such as this should work. I would like to suggest that in its consideration of manager burdens, the Justice Committee specifically proposes an arrangement whereby in the event of a dispute of use of a mutually owned facility, in the sheltered or retirement sector or mainstream housing developments, the view of two-thirds of the owners shall override the heritable right of individual part owners. S30 of the Act would seem an appropriate section to incorporate such a provision.

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