

Scottish Government submission of 23 March 2023

PE2006/A Review and simplify the legislation in relation to dismissal of property factors

Title Conditions (Scotland) Act 2003

The Title Conditions (Scotland) Act 2003 (“2003 Act”) provides homeowners with communal responsibilities important rights with regard to property managers.

Section 28 provides that a majority of owners within a community of properties may appoint or dismiss a manager. Section 28 is a default rule which applies where alternative provision is not made in the title deeds. The title deeds might specify a higher threshold than a simple majority is required to remove a manager.

Under section 64 of the 2003 Act, two thirds of the owners can remove a manager – whatever the title deeds say. Consequently title deeds which seek to require that owners be unanimous before a manager could be removed will have no effect – two thirds will be sufficient.

For tenement properties, if the title deeds are silent, then the Tenement Management Scheme in Schedule 1 of the Tenements (Scotland) Act 2004 applies. Rules 2 and 3 set out that appointment or dismissal a manager of a manager can be made by majority decision.

Importantly however, the powers to remove managers in sections 28 and 64 of the 2003 Act, and under the Tenement Management Scheme, cannot be exercised while a manager burden remains in effect.

A “manager burden” is a title condition by which a developer empowers a party either to act as a manager of related properties or to appoint another person to be manager. Manager burdens are typically used by a developer to appoint a manager in the initial years or a housing or other development – and so the permitted duration of manager burdens is restricted.

Manager burdens can only exist so long as the holder owns one of the properties being managed. Otherwise, the normal rule is that a manager

burden comes to an end after five years, but this is reduced to three years for sheltered or retirement housing. It is possible to provide for a shorter duration in the title deeds.

Manager burdens can exist for a longer period of up to thirty years if they are imposed in a sale under the right-to-buy legislation for council houses. Where they are allowed to exist for this longer period of 30 years, two-thirds of the properties can choose to remove a manager at any time, i.e. before the thirty year period has expired.

There is guidance on the dismissal of property factors on Under One Roof website <http://www.underoneroof.scot/articles/1108>

Property Factors (Scotland) Act 2011

The Property Factors (Scotland) Act 2011 implements a framework for the regulation of property factors through regulation. It provides minimum industry standards, to better protect homeowners who use factoring services by establishing a registration scheme, a code of conduct and a dispute resolution service.

A property factor is required, by section 1 of [the code of conduct](#) (the code) to provide each homeowner with a written statement of services (“WSS”). The WSS must set out –

- clear information that homeowners may (by collective or majority agreement or as set out in their title deeds) terminate or change the service arrangement including signposting to any relevant legislation, for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should include any "cooling off" period or period of notice;
- a clear statement confirming the property factor's procedure for how it will co-operate with another property factor to assist with a smooth transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners; including the information that the property factor may share with the new, formally appointed, property factor (subject to data protection legislation) and any other implications for homeowners. This could include any requirement for the provision of a letter of authority, or similar,

(These requirements do not apply to situations where homeowners do not own factored land – i.e. where the factored land is owned by a land owning land maintenance company.)

A revised version of the Code came into force on 16 August 2021 which has brought it up-to-date, clarified and strengthened it, ensuring that all registered property factors operate consistently to the appropriate standards, while also giving homeowners confidence in what their factor is offering them. The Code can be found at <https://www.gov.scot/isbn/9781802011388>

Proposal

The processes to appoint and dismiss a property factor are set out in the 2003 Act and within the Tenement Management Scheme. Individual title deeds may also stipulate how a property factor can be removed. Any issues arising as to the application of these procedures can be resolved through application to the courts.

It is the responsibility of a factor to ensure that the whole process is conducted in accordance with any detailed procedures set down and agreed by the homeowners/Residents Association. A factor is answerable to all homeowners.

Where there are isolated procedural disputes then these are best placed to be taken to court in order to receive a ruling which may then set a precedent.

The Scottish Government has currently no plans to amend the legislation.