

Income Collection Policy and Procedures – THE PORTFOLIO TEAM

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The purpose of this policy and guide is to provide clear procedures to ensure there is a consistent approach to preventing debt, collecting income and implementing best practice to ensure all shared owners have equal access to our service.

This guide provides procedures for the THE PORTFOLIO TEAM or The THE PORTFOLIO TEAM agent team members.

Introduction

Shared Ownership is intended to help people in housing need to access the property market when they are unable to purchase a property on the open market.

Shared owners are usually responsible for a range of charges under their lease, including rent for the proportion of the unacquired equity in their home, service charges (which may include buildings insurance unless it is arranged separately) and management fees and administration charges.

The PORTFOLIO TEAM has a range of tools and remedies available to prevent and reduce arrears, but the ultimate sanction is repossession (similar to forfeiture of lease).

The PORTFOLIO TEAM aims to ensure all rent and charges are paid on time and arrears are prevented where possible; to support shared owners in financial difficulties whilst sustaining their position as a shared owner and to deliver good customer service.

The PORTFOLIO TEAM aims to prevent arrears from accruing by offering advice and assistance to shared owners who can't pay their charges and take firm action against those who won't pay their charges.

Our aim is to prevent arrears accruing through the development of a 'payment culture' by:

- Ensuring shared owners understand their responsibility to pay their rent and administration charges before they purchase their property through a pre-sale interview or information.
- Making early contact with shared owners to ensure payments are complete and regular.
- Making prompt contact with shared owners as soon as they default on their payment agreements.
- Promoting different payment methods to shared owners.

We think the best arrears control is prevention. Where rent and other arrears arise, we will:

- Work through the escalation process.
- Initiate early action and vary the methods used to contact shared owners (telephone/home visit/letter/email) and the times we contact them (alternate morning or afternoon visits/out of hours contact where appropriate).
- Ensure any repayment agreements are affordable, sometimes by asking for details about shared owners income and essential expenditure.
- Maximise shared owners' income where possible by referral to the Welfare Benefits services.

- Where appropriate, refer shared owners with multiple and/or high-level debts to the Community Legal Advice Centre (CLAC) – formerly known as the Citizens' Advice Bureau (CAB) and the Welfare Benefits Service.
- Where a shared owner is vulnerable liaise with support agencies.
- Communicate with a shared owners' mortgage lender when action is being taken to recover a debt.
- Make use of all available remedies, with repossession (forfeiture) as the last resort.

Principles

- The PORTFOLIO TEAM's objective is to encourage shared owners to maintain clear rent/service charge account.
- Early contact and personal communication will be made with shared owners to provide advice and assistance in relation to the account.
- Where arrears arise the PORTFOLIO TEAM will seek to encourage shared owners to clear these as soon as possible, without causing undue hardship to the shared owner.
- The PORTFOLIO TEAM considers it unfair to allow shared owners to accumulate large rent arrears before it demonstrates that it is seriously pursuing the recovery of this debt. This could encourage shared owners to have a complacent attitude to the payment of lease charges.
- The staff of the PORTFOLIO TEAM will seek to provide shared owners with a range of advice and where appropriate refer sharing owners to any special benefits agencies.
- Shared owners in receipt of Housing Benefit are encouraged, but not pressurised, to have the Housing Benefit paid directly to the PORTFOLIO TEAM each month.

Rent Debit Process

- Rents are due monthly in advance. Monthly charges will usually be debited at the start of each month.
- Arrears reports will be produced and examined by The PORTFOLIO TEAM describing action in line with the appropriate procedures.

Procedures

- Detailed procedures are in place to reflect the above policy principles and debit process. Staff from the PORTFOLIO TEAM are responsible for adhering to procedure.
- The Director of Portfolio is responsible for ensuring compliance with this policy and its linked procedures.

Use of legal action

- No legal action will be taken without the prior authorisation of the Portfolio Director.
- Legal action will not be used indiscriminately to collect rent.
- Court action is normally conjoined for the recovery of both the arrears and the property.
- The lender (if known) will be advised if/when the PORTFOLIO TEAM is considering raising Court action against any shared owner and their agreement will be sought.

Reporting

Information and statistics will be maintained to allow staff and Landlord boards to monitor the effectiveness of this policy and linked procedure.

Landlord Boards will routinely receive details of the monetary value of arrears.

Senior management will also receive information on the progress of serious arrears cases 3 month plus arrears or arrears of plus one month where customers are not responding to any arrears chasing action after a period of three months.

Legal Constraints

We will comply and refer to statutory, industry practice and lease requirements throughout the income recovery procedure.

Relevant Legislation

The government legislation most likely to have an impact on how the PORTFOLIO TEAM can implement income recovery is:

- Landlord and Tenant Act 1985
- Housing Acts 1985, 1988 and 1996
- Commonhold & Leasehold Reform Act 2002.

The PORTFOLIO TEAM members will also refer to the lease, leasehold case law, RP Managing Partner concession agreements or LA Section 106 terms for all matters relating to rent and rent reviews.

Prior to any recovery action the most relevant and important points from the legislation to check are:

- What a service charge is and who has to pay this?
- Reasonableness of charges and standard of works or services.
- Challenging charges at the First Tier Tribunal.
- Timing of issuing of rent and service charge bills.
- Specification of landlord details on demands.
- Forfeiture and possession.
- Rights to further information.
- Prescribed form of rent and service charge demands.
- Issue of summary of service charges.

Any shared owner case that is persistently in arrears despite following the PORTFOLIO TEAM procedures will be referred to the PORTFOLIO TEAM 's legal advisors.

Lease

Most newly issued and historic the PORTFOLIO TEAM leases follow the Homes England (HE) approved shared ownership lease which contains fundamental clauses.

- Alienation provisions (refer to clause 3.18, in the model flat lease and 3.19 in the model house lease)
- Mortgagee Protection (refer to clause 8 in the model flat lease and clause 6 in the model house lease)
- Staircasing provisions (refer to the sixth schedule of the model flat lease and part 1 of the fifth schedule in the model house lease)
- Protected area staircasing provisions, where appropriate (refer to clause 3.17 and the sixth schedule of the model flat lease and the fifth schedule of the model house lease)
- Rent review (refer to the fifth schedule of the model flat lease - fourth schedule in the model house lease)
- Pre-emption provisions (refer to clause 3.19 and seventh and eighth schedules in the model flat lease- and clause 3.20 in the model house lease)

Billing Process - Rent, Services and Administration

Shared owners are usually notified of changes to rent and other charges in February of each year and shows the charge for each element, the total amount payable and the payment schedule.

The rent is reviewed every year in line with a mechanism described in the lease. The reviewed rent is increased in line with any proportionate increases in the retail price index (RPI). The rent is reviewed on an 'upwards only basis'. This means that the level of the rent will not go down when it is reviewed. However, any increase in the rent will usually be capped at a figure representing the RPI plus a 0.75% or 0.5%. This means that where the RPI is zero or negative the most the rent would increase by is 0.75% or 0.5%.

Shared owners will be advised of the outcome of the rent review by written notice, as detailed in the lease.

Payment Plans

Under the terms of the lease the rent must be paid by equal monthly payments in advance on the first day of each month. A copy of the rent review letter and invoice is kept on file.

Payment methods – rent and service charges

- A wide range of payment options are offered to ensure all shared owners can pay their charges via the method convenient for them. They can choose from:

- Direct Debit
- Our offices (at the cash desk and by debit/credit card on the telephone)
- The Post Office
- Post (cheque only)

Direct Debit is our preferred payment method because:

- It offers value for money compared with other collection charges
- Rent and charges are paid on time and in full freeing resources to focus on prevention

We promote Direct Debits to all shared owners where it is appropriate e.g. those who have bank accounts and a regular income and who can manage a bank account.

Collection Call

The PORTFOLIO TEAM will speak to customers who have arrears and with whom it is necessary to make contact to arrange payment of arrears. The overriding principles of being firm but fair will be applied. It is not realistic to issue staff with a script to follow, as part of the skill required in effective recovery work is to be sympathetic to an individual's circumstances and to be adaptive to the situation they are presented with.

Whilst the outcome of the contact will often be determined by the shared owners means and ability to pay, nothing should be assumed. The ideal outcome from every arrears management call should be a sincere and realistic payment promise to pay the arrears in the shortest possible time and a commitment to pay on time in the future.

The PORTFOLIO TEAM or agents should approach arrears collection in a consistent manner. Collecting debt and providing good customer service is a skill.

The challenge is to collect income and provide good customer service. A quality contact with shared owners – be that on the telephone or face-to-face – will enable staff to collect the income in a professional way.

A quality contact includes:

- Extending a courteous service
- Providing accurate information
- Demonstrating good service and product knowledge

Guide to approaching customers on arrears

Inbound Calls/Outbound Calls/Visits

Preparation:

Gather information

Assess defaulter type - Can't Pay / Won't Pay/ Pays when Prompted

Opening:

Greeting
Identify yourself
Confirm shared owner
Request payment

Call Opening:
Greeting
Obtain reference
Confirm shared owner
Request payment

Preparation:
Gather Information
Assess defaulter - type Can't Pay / Won't Pay/ Pays
Affirm Defaulter Type:
State facts
Question
Listen
Encourage Payment
Demonstrate understanding
Explain consequences
Explain effects
Negotiate Payment Promise
Secure best possible outcome in view of personal circumstances and severity of action

Summary & Close
Gain commitment
Re-affirm Terms of the Agreement

Mortgagee Protection Clause

Industry good practice means it is important that communications with a shared owners' mortgage lender is maintained when a shared owner is in arrears and especially when action is being taken to recover a debt.

The standard form Homes England (HE) lease has a Mortgagee Protection Clause that covers some aspects of arrears by the customer for both rent and mortgage and this should be considered when action is take possession of the property is proposed or acted upon. The escalation process therefore includes instances where the lender should be notified of a customer's arrears. This is not a request for payment but a notification to the lender of issues with non-payment.

Escalation Process

The escalation process provides a structure that prompts action to enable staff to take timely action to prevent arrears, collect income and manage caseload.

This section describes the key stages of the escalation process.

The escalation process has been designed to ensure that a consistent approach is being taken by all staff or agents.

Arrears recovery action is semi-automatic. Every month a report is produced which shows all actions generated on the accounts. Before the actions are authorised every individual account and relevant office file must be checked. Actions will not be authorised where:

- A payment or agreement has been recently made.
- A query/dispute on the account has not been resolved.
- A payment from another source is expected (this will usually be a mortgage lender).
- Relevant legislation or the lease has not been adhered to.
- Probate is ongoing.

It is therefore imperative that accurate and complete records are kept. Copies of all bills, letters, e-mails, faxes, leases, consultation notices, notices, agreements, arrangements, certificates, reminders, repair statements and mandates must be kept on the office file or on the computer. Notes of any relevant discussions or interviews with shared owners, outside agencies, solicitors, banks, building societies or work colleagues should also be kept and made readily available.

Shared owners are given the opportunity to arrange affordable repayment plans, take debt management advice, obtain information in relation to benefits and loans available and should be informed that their mortgage lender could be approached to pay the rent arrears.

However, where legal action is required the PORTFOLIO TEAM legal advisors will advise which form of legal action is most appropriate. The Portfolio Director will authorise the required course of action.

First Demand – Rent and Services

The rent and services charge notices are usually sent out in February of each year with a direct debit mandate showing a first payment date of 1st April. Where appropriate a Summary of Service Charges and Ground Rent Demand will also be included. A payment should be made by the end of April.

First Reminder (REM1)

The system will assume 12 monthly payments unless the leaseholder requests a different payment method. Where the first or full payment has not been made within one week a first reminder (REM1) should be issued.

For shared owners that do not start paying or make suitable arrangement after a further two weeks, an outbound telephone call will be made or e-mail sent (where details are available) to establish the reason for non-payment.

Confidentiality

Arrears should only be discussed with the shared owners who are named on the lease and therefore liable for all rent payments. When leaving a message, we will ask the shared owner to contact us to 'discuss the rent account' and not to 'discuss arrears'.

Second Reminder (REM2)

If no contact is made with the shared owner or a payback agreement made the second reminder (REM2) is issued.

In addition to a letter to the shared owner the lender must also be advised that arrears are outstanding. This is not a request for payment but a notification of an issue with non-payment.

In the second reminder (REM2) the shared owner may be requested to attend an interview or conference call. If contact is not made by the shared owner within two weeks staff will attempt to arrange an interview by telephoning them. After two weeks, no further attempts to interview will be made and the arrears process will continue. All dates and attempts will be recorded.

Interview

Before arranging an interview, staff should check shared owners profile information for any special needs. Any arrangements can then take into consideration disabilities, language, access, special needs, working hours, history and background of the shared owner.

If an interview is arranged staff should:

- Seek shared owner income and essential expenditure details.
- Sign post to appropriate debt management information and refer to Welfare Benefits Section if necessary.
- Take up any referrals to outside agencies where necessary, debt counselling or benefits teams.
- Try to make an agreement with the shared owner for repayment.
- Advise the shared owner that this does not waive the PORTFOLIO TEAM's right to pursue repossession (forfeiture).
- Explain that if the outstanding amount is not paid the shared owner's mortgage lender could be approached for settlement of the debt.
- Obtain written agreement to the amount of rent and charges and explain that this is required so that the shared owner's mortgage lender can be approached unless the rent and charges has been previously determined by a Court, an Arbitrator or the First Tier Tribunal

- Obtain details of the shared owner's mortgage lender (name and address), account number and written permission to approach the mortgage lender, if not already up-to-date and held on file.
- Explain that the shared owner's mortgage lender could be approached for repayment without their consent
- Warn the shared owner that they are likely to receive a letter from their mortgage lender.
- A written summary of the interview should be produced and held on file. A note of the date of the interview must also be recorded. Any agreements and advice given must be confirmed in writing to the leaseholder.

Third Reminder (REM3)

For shared owners who still do not start paying or make suitable arrangement after a further four weeks the third reminder (REM3) is issued which advises the shared owner that an approach will be made to the mortgage lender to pay the outstanding charges.

Approach Mortgage Lender

The shared ownership lease has a mortgagee protection clause that covers some aspects of arrears by the customer for both rent and mortgage. Throughout the escalation policy the lender should be kept informed of the arrears position, so that an approach to them for payment, does not come as a surprise.

Where applicable, a mortgage lender will have a legal charge over the shared ownership property. As non-payment of rent can result in forfeiture of the lease it is in the mortgage lenders best interests to avoid this. Through the mortgage protection clause they may agree to pay any outstanding amounts and add this to the shared owner's mortgage/loan.

The shared owner is informed that their mortgage lender will be contacted to repay the outstanding rent in the third reminder. Before action is taken staff should check the relevant office file for the interview records in relation to agreement or determination of the charges, mortgage lender details and consent to approach the mortgage lender.

Staff will then write to the lender requesting payment of arrears. Staff are legally entitled to obtain details of the mortgage lender from Land Registry if needed and to contact the lender without the consent of the shared owner. Where there is no mortgage lender the arrears process will continue.

Vulnerable shared owners must be informed that their mortgage lender may contact them regarding the debt if this has not been done previously.

The office file will be updated with the process followed, actual steps taken and copies of relevant letters in relation to approaching the mortgage lender.

Final Demand (REM4)

If the shared owner ignores the interview request or fails to make suitable payments, then legal action may be considered. If a Portfolio Manager is satisfied that all the necessary checks have been made and that the correct amount is being sought, then a letter is sent to the shared owner, giving seven days in which to prove payment or to contact the PORTFOLIO TEAM. If no action is taken, the case will be passed to the PORTFOLIO TEAM's lawyers to commence legal action.

Disputes

The PORTFOLIO TEAM is committed to working with all shared owners to solve problems and disputes quickly when they arise.

It is important to note that a dispute is not a standard enquiry or general complaint. Examples of disputes could be:

- Is the charge levied within the boundary of the house, flat or block?
- The outcome is below an acceptable standard and does not give value for money for the job or work done?
- Does the service provided constitute a chargeable service within the terms of the lease?
- Has the PORTFOLIO TEAM legitimately incurred the charge and is it 'reasonable'?

Rent and service charge disputes can be costly, both in terms of the time which is required to unravel and solve the problem and in terms of professional fees which may be incurred. If a dispute arises, it is important to manage it actively, positively and at the right level for early and effective settlement. If a compromise cannot be achieved litigation can result.

Where rent and service charge disputes arise, we will aim to:

- Register 'dispute' on our systems within 3 working days of receipt
- Advise shared owner(s) investigations will be undertaken, by whom, and confirm date of full response (within 10 working days).
- Consider the suspension of all or part income recovery procedures during a dispute investigation.
- Initiate early resolution by co-ordinating investigations between senior management, estate managers and agents.
- Arrange or agree to attend meetings, where appropriate, with shared owners(s) and other interested parties.
- Respond to shared owners(s) within 10 working days of receipt of the dispute. If extensive investigations are required, a response within 10 working days may not be possible. If this is the case, a holding response letter must be sent to advise shared owners of the action taken and

- Provide an estimate of when a full response will be available. The shared owner/s should be contacted again after 4 weeks if an investigation into a dispute is still ongoing.

Once a dispute has been satisfactorily resolved, shared owner(s) arrears collection should escalate in line with recovery procedures to enable prompt collection of rent and service charges.

First Tier Tribunal (FTT)

If an in-house resolution is not achieved, shared owners have the right to take their dispute to a FTT.

The FTT is an independent, impartial and semi-formal tribunal for landlords and tenants. Hearings are open to the public.

Neither party is required to be represented, evidence is not given on oath and many of the usual Court rules do not apply. The Tribunal hears both sides of the argument and then determines the issue, based on evidence provided and the judgment and experience of the Tribunal members. Their determination is issued in writing as soon as possible after the hearing.

A landlord or a tenant may apply to the FTT in respect of maintenance, repair or services provided and in respect of administration charges, (e.g. for providing consent for alterations or information). 'Improvements' undertaken or proposed by the landlord can also be the subject of an application.

The FTT has jurisdiction to determine the reasonableness of a service charge. The FTT can determine whether a service charge is payable, by whom, to whom, the amount, the date and the manner payable and whether a service charge would be payable if costs were incurred.

The FTT can also settle disputes about the landlord's choice of insurer, administration charges, the right to manage, the appointment of managers, the variation of leases and estate charges.

Charges levied under an Estate Management Scheme (i.e. a scheme approved under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing & Urban Development Act 1993) must be reasonable and a determination of reasonableness may also be sought from the FTT.

Prevention of Homelessness – Flexible tenure

It is likely that some shared owners will become subject to legal action for non-payment of rent and service charges and in a small percentage of cases this will result in repossession (forfeiture). Whilst repossession action is on occasion necessary, it should always be the last resort and should only be pursued once all other efforts to secure payment of service charge arrears have failed.

Flexible tenure is one of the tools that the PORTFOLIO TEAM can use to prevent the loss of a customer's home and is the last resort before possession action is taken. It should be considered carefully and impartially by the PORTFOLIO TEAM when a referral is made to the PORTFOLIO TEAM directorate. Flexible tenure is not an easy fix for a customer's financial problems as in many cases there is no way back to affordable home ownership once the property is purchased by the landlord outright.

Flexible tenure is designed to enable a shared owner to remain in their home either by selling some of their shares back to their landlord to reduce their mortgage to a more affordable and sustainable level, or by selling all shares back to the landlord and becoming a tenant at an affordable rent.

There is no 'right' to Flexible Tenure and any offer must be made purely at the PORTFOLIO TEAM's discretion subject to HE eligibility criteria.

It is important to ensure we have taken all steps, that are reasonable in the individual circumstances, to sustain home ownership and prevent homelessness and be able to evidence we have taken all appropriate action in line with legislation and our procedures. (See flexible tenure procedures).

Legal Action

If reminder letters do not deliver full payment of the outstanding bills (all overdue rent and charges) it may be necessary to consider legal action. Before any action is taken against the shared owner, the portfolio manager should consider issues which could apply and decide on appropriate action, in consultation with their line manager. Not all the following will always apply – each case must be considered separately and in the context of its specific circumstances. Possible actions include:

- Checking that the rent and service charge meets legal requirements i.e. the shared owner has been charged for the correct services.
- Checking that notices have been properly served (particularly the rent review notice).
- Being satisfied that the tests of reasonableness appear to have been met for work standards and costs. This is an initial check to make sure that there are no obvious areas where the test of reasonableness might fail: the PORTFOLIO TEAM legal advisors can offer more depth at this or at the referral stage, if necessary. In addition, the shared owner may raise queries regarding the charges as the case progresses. Referral to the lease to confirm that legal action would be appropriate. If necessary, advice must be sought from the Company's Legal Services to interpret the lease.
- It is preferable to seek legal advice at this stage to avoid costly expenditure on wasted Court action or unnecessary argument with the shared owner.
- Checking that there are no other relevant unpaid property debts. It is the portfolio manager's responsibility to discover any other debts that are unpaid on the property.

- Checking that the charge can be justified as far as it is possible to ascertain without knowing what queries the shared owner will raise during the case and that accounts have been certified, if necessary.
- For service charges, checking that the 18 months rule has been complied with, i.e. that the bill has been sent within 18 months of the charge being raised.
- Checking account on CML.
- Flexible Tenure has been considered.

Referral to the PORTFOLIO TEAM legal advisors

There may already have been informal discussions before this stage with the PORTFOLIO TEAM legal advisors, with exchange of documents if necessary. Form (REF1) must be completed when formally referring cases to the PORTFOLIO TEAM legal advisors. It is necessary to obtain the lease, any notice of assignment and ancillary documents in support of the referral. A copy of the form should be held on the office file.

A decision must be made when referring cases to the PORTFOLIO TEAM legal advisors as to whether to instruct that action be taken to recover the debt through the debt recovery procedure, or that forfeiture action should be taken. The PORTFOLIO TEAM's objective is always to recover the debt, not to evict shared owners' so instruction to forfeit leases should be a last resort.

The PORTFOLIO TEAM Director must be consulted before this action is taken.

The PORTFOLIO TEAM legal advisors, when instructed to do so, will follow the debt recovery process as follows:

- Within 14 days of receipt of instructions, open a file and list the matter for action.
- Consider the evidence in relation to the shared owner's debt as provided in Form REF1 and enclosures as to whether there is sufficient evidence to pursue The PORTFOLIO TEAM's claim against the shared owner.
- If there is sufficient evidence, send a letter before action in accordance with the Civil Procedure Rules, giving the shared owner 14 days to respond and provide full payment of the outstanding debt or proposals for payment (all proposals will be referred to the PORTFOLIO TEAM's instructing officer with legal advice as to whether or not to accept them).
- If no response is received to the letter before action, or the response is to deny liability for the outstanding amount, if appropriate, a claim will be issued at County Court within 21 days of the date of the letter before action.
- The shared owner will then have 14 days to admit or deny the claim.
- Within 14 days from the end of the time the shared owner has to file their defence, if no defence is filed, a request for Judgment in default will be made (that is a County Court

Judgment against the shared owner which will impact upon any future credit they attempt to secure and is enforceable, see below).

- If the shared owner files a defence within the allocated timeframe, a hearing at Court will be listed. The PORTFOLIO TEAM's instructing officer will be informed as to the nature of the defence, whether alternative dispute resolution (such as mediation) is appropriate, the timetable set by the court, the need for their availability as a witness at the hearing etc. The PORTFOLIO TEAM will be notified of the result of a hearing within three days of the decision by the Court.

Enforcement of the County Court Judgment

If a Judgment is obtained, it can be enforced in several ways. The method should be taken by The PORTFOLIO TEAM legal advisors in consultation with The PORTFOLIO TEAM's instructing officer.

Methods of Enforcement:

- Order to Attend Court for Questioning - The shared owner is required to attend the County Court and give details on oath about their income and expenditure.
- Warrant of Execution - The County Court Bailiff or High Court Enforcement Officer ('Sheriff') can be instructed to seize goods to the value of the debt which can be sold to settle the debt.
- Attachment of Earnings Order The debtor's employer is instructed by the County Court to make direct deduction from their salary to pay the debt.
- Third Party Debt Order - A third party, usually a bank or building society who has funds owing to a debtor, can be instructed to make payment to another creditor. This only applies to money which will be held by the third party, for instance in a known account, on the day of the Order.
- Charging Order/Order for Sale - Registering a charge against the shared owners interest in their property ensures that, if the property were to be sold, the shared owner would be required to pay the debt owed. Charging Orders can be enforced by way of an order for sale. This is an option worth considering if there is equity in the property. Other enforcement action can still be pursued if the debt is secured by the charge. If the property is sold and there is a surplus, the balance will be paid to the debtor. If there is a shortfall after the sale, other enforcement action can still be taken to collect the rest of the debt.
- Bankruptcy - If the debt exceeds £750.00, a statutory demand can be issued and bankruptcy of the shared owners can be petitioned for. This will be considered where there is no genuine dispute as to liability, so it may be used prior to obtaining a County Court Judgment. The Official Receiver will attempt to satisfy the debt from the bankrupt's estate, which can sometimes be a lengthy process. Bankruptcy does not guarantee full payment of the debt, but it ensures that as much of the debt as possible is paid from the debtor's estate, and that this is done fairly, along with all the debtor's other debts.

Notice of Seeking Possession

The PORTFOLIO TEAM's Director on behalf of the PORTFOLIO TEAM will make the decision to seek possession in all cases and may consult the PORTFOLIO TEAM lawyers as part of the decision.

The key rule when considering action over arrears is not to seek possession where there is a reasonable alternative. If this is not possible, the PORTFOLIO TEAM is legally entitled to use Ground 8, which is one of the mandatory grounds for possession of an assured tenancy listed in Housing Act 1988 Schedule 2.

However, the use of Ground 8 is an extreme step in the context of shared ownership housing. There is an important factor to remember when considering possession action:

- After proceedings have been issued, demanding or accepting any monies could invalidate the action.
- Clearly payment to the PORTFOLIO TEAM cannot be stopped immediately it is received into an account, since the stop on acceptance cannot be applied until the payment is recognised by an officer dealing with outstanding arrears. The company will be responsible for returning any cheques received.
- The first stage would be to serve a Notice of Seeking Possession, and to continue to try to negotiate full payment of the balance either in full or over time. The shared owner should be warned that if the Company obtains possession in this way, the lease will be terminated and the shared owner and lender will lose any interest in the property, even if the market value exceeds the balance owed in rent and mortgage outstanding.

Preparing for Court

Applications to Court should not be made until 4 full rent weeks have elapsed from the service of the Notice of Seeking Possession. The PORTFOLIO TEAM legal advisors will prepare all notices.

The PORTFOLIO TEAM legal advisors will write to the shared owner confirming that the court proceedings have begun and that they will receive a Summons from the court.

It should be stressed that the shared owner can avoid eviction if they make a payment agreement prior to the court hearing and stick to it until the hearing and the PORTFOLIO TEAM seeks to help the shared owners to avoid eviction. The tone of the PORTFOLIO TEAM letters will be firm and clear but approachable. The letter will repeat the warning that eviction would lead to loss of any equity for the shared owner.

The shared owner should be urged to meet with the property manager to make an agreement and every reasonable effort must be made to communicate with the customer at this stage. It should be stressed that advice can be given by other agencies about welfare benefits and

budgeting, and that regularity of payment is the key to clearing arrears rather than making unaffordable agreements.

The shared owner should be urged to attend the Court hearing in order that account can be taken of their circumstances and a postponed possession order requested if they have made an agreement to pay. The Court hearing will only be withdrawn if the balance is paid in full. However, the costs of the Court application may be rechargeable to the defendant.

Court Hearing

When the date of possession hearing is confirmed, the PORTFOLIO TEAM legal advisors write to the shared owner to advise them of the action the PORTFOLIO TEAM intends to take. In any case a rent statement must be sent to the customer at least 10 days in advance of the Court hearing to comply with the Civic Procedure Rules pre-action protocol.

Generally, a suspended possession order should be requested where the shared owner is co-operating and has begun to pay in accordance with an agreement.

Immediate possession should be sought where no contact has been achieved with the customer despite reasonable attempts by letter, phone call, visits, or where the customer is making no payments at all and can offer no reasonable explanation.

Before leaving Court, the PORTFOLIO TEAM and the shared owner should agree how they will maintain contact and liaise about the payments or payment difficulties.

Post Court

Where a suspended possession order has been granted by the Court, the PORTFOLIO TEAM legal advisors will confirm the Court's decision in writing stressing the importance of maintaining the required payments.

The case will be monitored closely in line with when payments are due. If the customer fails to keep up with the agreement at any time they should be written to and contacted urgently to stress that fixing a date for possession is the next step and that while the PORTFOLIO TEAM would prefer to avoid this, it must act if no progress has been made.

If the customer reduces their regular payment they will be in breach of the Court order. Therefore, any requests to reduce either the amount of payment or the frequency of payment should be discussed carefully. Any renegotiation of payment will be based on a change in circumstances such as Benefits or earnings confirmed using a financial statement or by an independent money advisor. In these circumstances, the shared owner may apply to the Court for a variation to the order. Where the property manager deems that a variation is appropriate they should advise the shared owner on how to make such an application and we shall not oppose such applications. If the variation is not agreed by the court the shared owner should be

warned that the PORTFOLIO TEAM is entitled to expect the customer to abide by the terms of the original order, and that enforcement action can be taken if they do not.

Breach of Court Order

If the Court Order is breached and all reasonable attempts to help the shared owner get back on course have been exhausted, the PORTFOLIO TEAM's solicitors may need to apply for the shared owner to be evicted. Attempts to contact and/or work with the shared owner, to avoid the need for eviction, and to encourage them to seek legal advice, will continue through this process.

Possession Action by Lender

There may be cases where a shared owner is not paying their mortgage (whether or not they are paying their rent) and the lender initiates possession action. There is best practice guidance from CML and Nat Fed regarding this process and the procedures set out below draw from this and ensure that action is taken within the appropriate timescales for the benefit of all parties involved.

There is a general assumption that flexible tenure will always be considered if the shared owner qualifies and wishes to follow this route and it is financially viable. Other options would be to assist the shared owner to sell their share to another person from any waiting list or to obtain specialist independent debt/ money advice. The following actions should be followed by the Portfolio Manager:

- Lender informs the PORTFOLIO TEAM of their intention to take possession action. The PORTFOLIO TEAM should respond within 14 days in writing indicating whether the PORTFOLIO TEAM wishes to exercise the option to repurchase the property.
- The shared owner should be contacted on receipt of the lenders notification to ascertain if there is any assistance that can be given to maximise their income, find them a buyer from the current waiting list or explore flexible tenure. This contact should be by telephone, letter and in person. A referral should be made to the PORTFOLIO TEAM director for flexible tenure depending on the customer's preference. The shared owner should be asked to confirm that they are happy for information to be shared between lender and the PORTFOLIO TEAM to ensure a smooth process.
- The property should be valued within 14 days of the PORTFOLIO TEAM's initial response to the lender. The valuation is for two purposes – Staircasing Flexible tenure/sale - The valuation should have two sets of differing assumptions which may result in two values if the customer has improved the property. Staircasing assumes that the property hasn't been improved by the current owner whilst the assumption for sale or flexible tenure is that the property is in its current condition.
- The property manager should follow the procedures for flexible tenure (see Flexible tenure procedures) if this is what the customer would like the PORTFOLIO TEAM to consider.

- The assessment process and decision to proceed should be completed within 1 week of receipt of the valuation and the lender informed in writing within 3 days of the decision being made to proceed with the flexible tenure route.
- If the customer wishes to sell the property, the procedures for sale should be followed and the lender informed in writing.
- If the customer wishes to accept possession action by the lender or flexible tenure is not suitable then the lender should be informed within 3 days of this decision being made. The lender will then normally seek possession through the courts. The PORTFOLIO TEAM legal advisors should be instructed to provide the lender with a draft memorandum of staircasing.
- Assistance should be provided to the lender if requested during the possession process, attending the property on the day of possession if so required.
- The customer should also be signposted to the LA Homelessness Department if possession is to take place.
- If the property is repossessed and the lender makes a claim under the mortgage protection clause (MPC) then this should be responded to in writing within 14 days of receipt. The independent valuation obtained should be referred to when agreeing a staircasing figure with a lender.

Sample collection action process and sample letters.

Information to log with customer

Full Name, Address, Post Code, Telephone, No Mobile No

Tenure Type Introductory/Secure/Leasehold Tenure

Start Date

Current Weekly

Rent (After HB)

Tenant:

Rent Balance

Current Monthly Service Charges

Reference

Leaseholder:

Service Charge Balance

Reason For Referral

Housing Options Social Services Agency to which Referral is being made Other (Please Specify)

Telephone No referring officer

E-Mail

Client Consent

(To be obtained during face to face interviews only)

I hereby confirm that I give my consent to The THE PORTFOLIO TEAM referring me to your agency in connection with the above matter.



Income collection policy and procedure
The Portfolio Team
July 2019

Signature:

Date:

Receiving Agency

REM1

Name
Address
Ref

Dear

Re: Arrears – Rent/Administration charges/ management fees/ Service Charge - lease address

Our records show that on <<date>> the sum of <<£amount>> has not been paid. Under the terms of your lease rent and service charges are due monthly in advance.

Please ensure that this arrear is paid within the next seven days. Your home is at risk if you do not pay your rent and service charges.

If you have paid the outstanding amount referred to, please ignore this letter.

If you are experiencing or are likely to face any financial difficulties affecting your ability to pay the monies due under your lease, you may wish to contact a national or local debt advice service. Please find details attached.

Should you wish to discuss your rent or service charge account further, or make an arrangement to pay, please contact me on, by email at

Yours sincerely

Portfolio Manager

REM2

Payment Reference:

Date :

Shared Owner Address:

Dear

Re: Arrears – Rent/Administration charges/ management fees/ Service Charge - lease address

We wrote to you on . Our records show that on <<date>> the sum of <<£amount>> has not been paid. The last recorded payment we received from you was for £<<amount>> on <<date>>.

Under the terms of your lease rent and service charges are due monthly in advance and failure to pay is a breach of the lease. Your home is at risk if you do not pay your rent and service charges.

The THE PORTFOLIO TEAM expects to receive full settlement of this debt within seven days. Failure to clear the arrears or contact me to arrange a time to discuss your payments will result in one of the following actions being taken to recover the debt:

- Your mortgage lender will be contacted to repay the outstanding rent and service charges.
- We will contact our legal advisors to commence recovery action.

If you are experiencing or are likely to face any financial difficulties affecting your ability to pay the monies due under your lease, you may wish to contact a national or local debt advice service. Please find details attached.

To discuss your rent or service charge account or make a payment, please contact me

on, by email at.....

Yours sincerely

Property Manager

REM3

Payment Reference:

Date:

Shared Owner Address:

Rent and Service Charge Arrears <<£amount>>.

Dear

Re: Arrears – Rent/Administration charges/ management fees/ Service Charge - lease address

Despite contacting you on several occasions regarding your rent and service charge arrears, we have not been able to reach a satisfactory agreement with you.

<<contact action >> << and dates >>

Every effort has been made to help you repay these arrears.

We, therefore, have no option but to refer this matter to your mortgage lender without further reference to you. If your lender or you do not make payment, in full, within two weeks legal action will be taken.

If legal action is taken you will be liable for interest on the debt and any Court costs incurred. Your home is at risk if you do not pay your service rent and service charges.

If you have any queries about the contents of this letter, please contact me on, by email at

If you are experiencing or are likely to face any financial difficulties affecting your ability to pay the monies due under your lease, you may wish to contact a national or local debt advice service. Please find details attached.

Yours sincerely

Property Manager

REM4

Payment Reference:

Date :

Shared Owner Address

Dear

Re: Arrears – Rent/Administration charges/ management fees/ Service Charge - lease address

You have been contacted about your rent and Service Charge arrears on a number of times but you have failed to pay these arrears.

<< actions>> <<and dates>>

Payment of <<£amount>> must be made within 7 days. Failure to make payment within this time will result in a request by our Portfolio director to commence debt recovery action.

Should debt recovery action be taken you should be aware that a County Court Judgment could be obtained against you to recover the arrears, enforcement of which can include use of bailiffs and petition for your bankruptcy. If recovery by this method is not successful, forfeiture proceedings may be issued to forfeit your lease. This could mean that your home may be taken from you.

If you are experiencing or are likely to face any financial difficulties affecting your ability to pay the monies due under your lease, you may wish to contact a national or local debt advice service. Please find details attached.

To discuss your rent or service charge account or make a payment, please contact me

on, by email at.....

Yours sincerely

Property Manager