

## 1.0 CONTEXT

- 1.1 The Housing (Scotland) Act 2001 (H(S)A2001) empowers the landlord of a Scottish Secure Tenancy to recover an abandoned property without the need for court proceedings through the issue of relevant notices, served on the Tenant at the property.
- 1.2 Section 2.1 of the Scottish Secure Tenancy agreement specifies the Tenant: must take entry to the house, occupy and furnish it and use it solely as their only or principal home. Further, section 2.3 specifies if the house is going to be unoccupied for more than four weeks the tenant must tell GWHA before they leave. Finally section 6.4 specifies: GWHA will give the Tenant at least four weeks' notice that the association believe that the property is abandoned. If at the end of that period there are reasonable grounds for believing the property is abandoned, GWHA may repossess it by service of another notice.
- 1.3 The H(S)A2001 and the Tenancy Agreement give GWHA the right to enter any property in which there are reasonable grounds to believe it has been abandoned, in order to secure the property against vandalism and repossess the property for future letting, in accordance with the [Scottish Secure Tenancy \(Abandoned Property\) Order 2002](#).
- 1.4 This Policy should be read in conjunction with GWHA's Forced Access Policy and Joint Tenancies Policy.

## 2.0 AIMS

- 2.1 GWHA aims to ensure that appropriate action is implemented at the earliest opportunity where it is anticipated that a property has been abandoned by the tenant. The key aims are:
- 2.1.1 To determine quickly that a property has been abandoned.
- 2.1.2 To minimise the time a property is unoccupied.
- 2.1.3 To minimise the risk to surrounding properties where a property has been deemed to have been abandoned;
- 2.1.4 To minimise the potential rent loss resulting from abandoned properties.
- 2.1.5 To protect the rights of tenants and the Association when repossessing a property.
- 2.1.6 To minimise costs to the Association in relation to potential repairs, forced access costs, storing of belongings etc.
- 2.1.7 To make the best use of housing stock by ensuring that abandoned properties are timeously repossessed for re-let.
- 2.2 To ensure compliance with legislation, guiding standards and best practice.
- 2.3 To mitigate risk.

## 3.0 DEFINITIONS

- 3.1 References are made in this policy to the following terms, defined as follows:
- 3.1.1 **Tenant:**  
The Tenant or Joint Tenant of the property, as named on the tenancy agreement with GWHA.
- 3.1.2 **Occupant:**  
Anyone permitted access to the house by the Tenant or Joint Tenant. This can include permanent household members, or visitors.
- 3.1.3 **Abandoned:**  
When GWHA are satisfied that the property is unoccupied; and that the Tenant does not intend to occupy it.
- 3.1.4 **Reasonable Enquiries:**  
The enquiries undertaken to contact the Tenant, or to ascertain their whereabouts. Examples may include, but are not limited to:
- Property visits and inspections;
  - Contact via telephone, text, email or letter;
  - Speaking with neighbours, family members, next of kin or emergency contacts;
  - Partnership working with agencies such as Police Scotland, HM Prison Service and Glasgow's Health and Social Care Partnership.
- 3.1.5 **Lacking capacity:**  
The law in Scotland generally presumes that adults (i.e. those over the age of 16) are capable of making personal decisions for themselves and of managing their own affairs. The Adults with Incapacity (Scotland)

Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate.

#### 3.1.6 **Power of Attorney (POA):**

A legal document appointing someone to act for and make decisions on behalf of the granter. It can cover:

- a) Financial matters only (e.g. dealing with bank accounts)
- b) Welfare matters only (e.g. deciding on appropriate care/accommodation)
- c) Or both financial and welfare matters.

A person can only grant POA if they have capacity. Once the deed is signed and registered with 'The Office with the Public Guardian' it remains in force until it is either revoked by the granter or until death

#### 3.1.7 **Guardianship Order (GO):**

An order appointing someone to act on another's behalf. It can cover:

- a) Financial matters only
- b) Welfare matters only
- c) Or both financial and welfare matters.

Financial and/or welfare guardianship is only appropriate where a person does not have capacity to make decisions on their own behalf, and therefore cannot appoint a POA to act for them. GOs involve an application to the court – the procedure is lengthy (typically 6+ months) and complex, and when granted are normally for a period of 5-10 years.

#### 3.1.8 **Intervention Order:**

A one-off intervention order, which governs a specific action or decision which an adult lacks the capacity to make. An order can be made, via the Sheriff Court, relating to the adults property (including termination of a Scottish Secure Tenancy), financial affairs or personal welfare. Generally there is no fixed period of time the order will remain in place, rather the order will last only until the action has been carried out. S.53(3) of the Adults with Incapacity (Scotland) Act 2000 places a duty upon the local authority to apply for an intervention order relating to a particular decision, under circumstances where it appears that an order is necessary but nobody else is applying for one.

## 4.0 **POLICY**

### 4.1 **General**

4.1.1 Where GWHA believes a Tenant has abandoned the property an exhaustive and auditable process of reasonable enquiries will be carried out, in accordance with the Abandoned Properties Procedure. A record of the enquiries undertaken will be retained.

4.1.2 It may be required, in some instances, for GWHA to secure the house and any fittings, fixtures or furniture against vandalism, prior to repossession. In doing so, the Association, or appointed persons working on behalf of the Association, are permitted to force access to the house if necessary in accordance with the Forced Access Policy.

4.1.3 The approval of the Executive Team is required to proceed with recovery of abandoned properties in all instances.

### 4.2 **Abandonment of tenancy (by one or all parties)**

4.2.1 If, after conducting reasonable enquires, GWHA is satisfied that the property has been abandoned, a notice will be served on the Tenant(s) which states that we have reason to believe the property is unoccupied and that they [*the tenant*] do not intend to occupy it.

4.2.2 The notice will specify that:

- a) the Tenant is required to inform us, in writing, within 4 weeks (28 days) of service of the notice if the Tenant intends to occupy the property;
- b) the property will be recovered by service of a second notice (after expiry of the 4 weeks/28 days) if no contact is made, in writing, within that 4 week (28 day) period;
- c) items within the house may be disposed of at point of repossession.

4.2.3 If, following expiry of the 4 week (28 day) timeframe as specified in the first notice, the Tenant has failed to make written contact, GWHA will serve a final notice bringing the tenancy to end with immediate effect, and take possession of the house without any further proceedings.

#### **4.3 Abandonment by joint tenant alone**

4.3.1 In instances where one joint tenant has alerted GWHA to another joint tenant's abandonment of the tenancy, reasonable enquiries will be undertaken to independently verify the information.

4.3.2 If, after conducting reasonable enquiries, GWHA is satisfied that a joint tenant has abandoned the property, a notice will be served which states that we have reason to believe the property is not being occupied (by the abandoning tenant) and that they do not intend to occupy it. This notice will be served on the abandoning tenant, and each of the joint tenants.

4.3.3 The notice will specify:

- a) GWHA has reason to believe that the abandoning Tenant is not occupying the house, and that they do not intend to occupy it as their home;
- b) the Tenant is required to inform GWHA, in writing, within 4 weeks (28 days) of the serving of the notice, if they intend to occupy the house as their home;
- c) their interest in the tenancy will be brought to an end if it appears to the Association at the end of this period that the Tenant does not intend to occupy the house.
- d) GWHA will serve a copy of the notice, as served on the abandoning Tenant, on each of the joint Tenants.

4.3.4 If, following expiry of the 4 week (28 day) timeframe as specified in the first notice, the abandoning Tenant has failed to make contact, GWHA will serve a final notice bringing the abandoning Tenant's interest in the tenancy to an end (*no less than*) 8 weeks (56 days) later than the date of the second notice is served.

#### **4.4 Personal belongings found within an abandoned property**

4.4.1 GWHA will take a detailed inventory and photographs of any items left within the abandoned house at the point of repossession.

4.4.2 Items will be removed and disposed of with immediate effect if their cumulative value (if sold) is deemed to amount to less than the cost of 6 months storage and any unpaid rent.

4.4.3 Items will be removed and stored for a maximum of 6 months if their cumulative value (if sold) is deemed to amount to greater than the cost of 6 months storage and any unpaid rent.

4.4.4 In instances where items have been stored in accordance with 4.4.3; if the abandoning Tenant contacts the Association within the 6 month storage period, items will be released subject to receipt of payment for unpaid rent and all expenses. Expenses may include costs incurred as a result of:

- a) Securing property
- b) Forced access
- c) Lock change
- d) Storage of items
- e) Outstanding rechargeable repairs
- f) Outstanding court expenses
- g) Restoring the property to a lettable condition.

4.4.5 In the event that items are not claimed within the 6 month period, they may be disposed of at GWHA's discretion, including by way of sale. Any funds obtained through sale will be offset against unpaid rent or any expenses, as described in 4.4.4 above.

#### **4.5 Abandonment Register**

4.5.1 The Scottish Secure Tenancies (Abandoned Property) Order 2002 places an obligation on landlords to maintain a register of houses in which property (personal belongings, household contents etc.) has been found. GWHA maintains a digital register of all abandoned houses and associated inventories. As required, a register of houses repossessed by the Association in the preceding five years, subject to removal of personal information and/or identifying characteristics, will be made available for inspection by members of the public, upon request at reasonable times.

#### **4.6 Tenants lacking capacity and permanently residing in a care facility**

- 4.6.1 In some instances GWHA may receive notification from a third party (i.e. family member, Social Worker etc.) that a Tenant, who has been deemed to lack capacity, has been made a permanent resident within a care facility, and thus is not occupying the property, nor will they return to occupy it as their principal home. GWHA will not seek to recover the tenancy as an abandoned property in such instances.
- 4.6.2 The Association's primary course of action will always be to liaise with family members or Social Work Services to verify the incapacity and confirm the permanence of the residence within the care facility.
- 4.6.3 Where permanence has been confirmed the Association will seek to identify whether a Power of Attorney (POA) or Guardianship Order (GO) exists, and to engage with the named POA or Guardian to terminate the tenancy, in writing, on behalf of the Tenant. GWHA requires sight of the original POA or GO, and to take a copy for our records in such instances.
- 4.6.4 In the event no Power of Attorney (POA) or Guardianship Order (GO) is in place, and no pending application is underway, GWHA will liaise with Social Work Service to enquire about the Local Authority's intention to pursue an intervention order to bring the tenancy to an end.
- 4.6.5 In instances where Social Work Services confirm they will not pursue a GO or an intervention order, GWHA will initiate court action to seek decree to end the tenancy, and for expenses incurred as a result of the action.
- 4.6.6 Where the Association has concern that the tenant lacks capacity, guidance will always be sought from agencies qualified to determine the tenant's capacity, or to confirm a prior diagnosis (e.g. Social Work Services, GP, Hospital Consultants, Solicitor). GWHA will never presume to make a determination about the tenant's capacity.

### **5.0 FEEDBACK, APPEALS AND COMPLAINTS**

#### **5.1 Feedback**

- 5.1.1 GWHA Tenants and other customers may provide feedback about this document by emailing [admin@glasgowwestha.co.uk](mailto:admin@glasgowwestha.co.uk)

#### **5.2 Appeals**

##### **5.2.1 Appeals against repossession of property**

- 5.2.1.1 The H(S)A2001, Chapter 1, Section 19 sets out that an individual who is aggrieved can raise a summary application to challenge the validity of the notices served. This must be done within 6 months of the second notice being served.
- 5.2.1.2 GWHA will be obligated to allow continuation of the tenancy (if the property has not been re-let) or make other such accommodation available to the Tenant if the court decrees that the Association:
- a) Has failed to comply with the statutory procedures;
  - b) Did not have reasonable grounds for finding that the:
    - (i) house was unoccupied, or
    - (ii) Tenant did not intend to occupy it as their home;
  - c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.

##### **5.2.2 Appeals against repossession of joint tenancy**

- 5.2.2.1 In accordance with section 21 of the H(S)A2001, a Tenant who is aggrieved by termination of their interest in a joint tenancy by GWHA under Section 20(3) of the Act may raise proceedings by summary application within 8 weeks after the date of service of the final notice.
- 5.2.2.2 GWHA will be obligated to re-instate the joint tenancy or make other such accommodation available to the Tenant if the court decrees that the Association:
- a) Has failed to comply with the statutory procedures;
  - b) Did not have reasonable grounds for finding that the tenant:
    - (i) was not occupying the house, or

(ii) did not intend to occupy it as their home;

- c) Made an error in establishing the Tenant's lack of intention to occupy the property as their home, and the Tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of their intention so to occupy it.

5.2.2.3 In the case where a declarator is granted (re-instatement of joint tenancy), the court has additional powers to grant further orders in relation to the Tenant's interest in the tenancy as it sees fit; for example, for compensation to be paid.

### **5.3 Complaints**

5.3.1 Applicants with a grievance arising from use of the Association's Abandoned Properties Policy will be considered in accordance with GWHA's Comments and Complaints Policy.

5.3.2 Once the Association's Comments and Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of abandonment.

### **6.0 REVIEW**

6.1 This policy will be reviewed every five years, or sooner, subject to a change in legislation or circumstance.

6.2 The policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.

### **7.0 DELEGATED AUTHORITY**

7.1 Delegated authority is granted by the Management Committee to the Chief Executive and Staff to implement this Policy and the associated procedures.