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Private
Retirement
Housing
**Code of Practice
for Scotland**

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Foreword



*Alex Neil MSP
Minister for Housing and Communities*

Retirement housing has grown in popularity in Scotland in recent years, providing an opportunity for people to maintain their own homes in later life, while benefiting from the provision of management services which take care of some of the more onerous tasks of home ownership. Whether these services are provided by private companies or housing associations, both managers and owners need to be aware of the standard of services that should be achieved.

This Code aims to promote best practice in the provision of management services in retirement housing, setting out clearly what must be provided by law, and what else should be provided as good practice. As such I hope it will be a useful resource for both managers and owners. It should also be a useful source of information for prospective owners of retirement housing and help them to reach decisions on the right housing options for them.

Since the publication of the previous Code of Practice in 2000, the Title Conditions (Scotland) Act 2003 has been passed, making it easier for owners to change managers, if they are not satisfied with the services they receive. This Code provides guidance on the process to be followed, to try and ensure a smooth transition.

I am very grateful to ARHM for its work in taking forward the revision of the Code of Practice and to everyone who contributed their thoughts and ideas through the Working Groups, Sounding Board and focus groups. In particular, I would like to thank the owners who took the time on a voluntary basis to contribute their views.

They have all made an important contribution to shaping this revised and more detailed Code of Practice, which I commend to managers, owners and prospective owners alike.

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Introduction, Definitions and Abbreviations

The purpose of this Code of Practice is to promote best practice in the management of owner-occupied retirement and sheltered housing. It sets out guidance on the procedures that managers should follow and the standards of service that owners should expect to achieve. Although the Code is not intended to provide comprehensive advice to the owners or potential purchasers of retirement or sheltered housing, it should provide a helpful source of reference.

Application of the Code

This Code applies in Scotland only and replaces the Framework Code of Management Practice for Owner Occupied Sheltered Housing published by the Scottish Executive in 2000. It applies to owner-occupied retirement and sheltered housing, whether managed by private companies or housing associations, but not rented sheltered housing.

Structure

In this Code the word '**must**' is used to indicate a statutory legal requirement or a requirement of common law and the word '**should**' to indicate recommended or best practice. Such recommended best practice cannot, however, override the provisions of the Deed of Conditions.

Where a statutory legal requirement appears in the Code it is accompanied in the margin by a reference to the provision of the relevant Act.

This Code is directed towards management organisations who manage owner-occupied retirement and sheltered housing developments. These organisations are referred to as 'managers' throughout this Code.

The Code and the Choices of Owners

With the right for owners to change the manager of developments given in law, it is the owners themselves who will often decide the level of service and standards they want, subject to the law and the Deed of Conditions. There may be occasions where the owners with good reason do not want a manager to follow all of the requirements of this Code.

In such cases, it would be acceptable for a manager to depart from the recommended best practice (the "**shoulds**"), but never the legal requirements (the "**musts**") or from the terms of the Deed of Conditions. However, it is recommended that managers should only depart from the Code if a consultation exercise has been undertaken with owners.

Acknowledgements

The Code has been the subject of widespread consultation with housing, professional and residents' organisations as well as with ARHM member organisations. The Association is most grateful for the advice and support it has received in the preparation of this Code.

Disclaimer

The Code only applies to Scotland and does not purport to be a comprehensive statement of law. No liability can be accepted for errors or omissions or for any loss or damage sustained by anyone acting in accordance with this Code. If readers are in any doubt about their rights or obligations, they should contact a specialist advice organisation.

Definitions

In this Code the following definitions apply:

Contract Law

The law which binds parties to a contract or Deed to meet the conditions of that contract. In this Code, where the word **‘must’** in the text is accompanied by a reference to ‘contract law’ in the margin, this indicates a provision common to most Deeds and therefore a ‘contract law’ requirement. Where it is not, however, a provision of a particular Deed, that ‘requirement’ becomes recommended or best practice.

Deed of Conditions

A deed imposing conditions upon the first purchaser of a dwelling and all future owners which constitute ‘real burdens’ in law. These conditions may confer rights on the manager to take decisions on such matters as the services to be provided to owners in relation to the fabric of the dwelling and the charges to be made for those services.

The condition of title of the dwelling and the common areas of the development will usually be contained in one deed but all references in this Code to a Deed of Conditions include references to conditions of title generally.

Development

The term used for dwellings managed as a group with a package of management services, also known as a scheme, estate or facility.

Gender etc.

References to ‘he’, ‘his’ or ‘him’ cover also ‘she’ or ‘her’ and may also include the plural, and words in the plural usually include the singular.

House Manager

The person who is the main point of contact for residents, assists in the management of the development, and may respond to emergency alarm calls. This person may also be called the warden, estate manager or resident secretary. The role may be a residential or non-residential one.

Housing Association

Housing association means a society, body of trustees or company as defined by the Housing Association Act 1985 which does not trade for profit and whose purpose is to provide, construct or manage housing accommodation.

The majority of housing associations are registered with the Scottish Housing Regulator, and many have charitable status.

Housing management services

Services which provide landlord or factor type functions relating to the maintenance and management of accommodation (as opposed to providing support to occupants within their own accommodation).

Housing support services

Services which provide assistance, advice or counselling to a person who has a particular need, with a view to enabling that person to occupy residential accommodation.

Manager

The person or organisation having day-to-day control of the management of the development is called the ‘manager’, and is often known as the managing agent or factor. It could be a company, housing association or individual responsible for the upkeep, repair and maintenance of the development, usually including the provision of house manager services.

Management Fee

Where the manager levies a charge for costs and overheads involved in organising services as distinct from the costs of the direct services which are also charged, it is called a management fee in this Code (see Chapter 3).

Owner

The owner is any person with the recorded or registered title to a dwelling in a development or who has the title held on their behalf by an agent, lender or representative. The owner need not be the resident in the dwelling.

Owners’ Handbook

The Owners’ Handbook is the document that contains essential information for purchasers and owners of retirement and sheltered housing, the contents of which are set out in Appendix One.

Owners’ Association

A group of owners who represent the views of owners with a written constitution or corporate status is called an owners’ association. The association may be recognised by the manager for the purpose of ascertaining owners’ views. Some developments may have a Residents’ Association, instead of an Owners’ Association.

Reserve or Sinking Fund

A fund created to build up sums of money over time that can be used to pay for large items of expenditure in the development. Sometimes also called contingency or sinking funds. Such funds are raised either by contributions from service charges and/or by the operation of a formula under the Deed of Conditions which provides for a fixed deduction from price to be made on any sale of a relevant dwelling.

Resident

The person who actually occupies the dwelling who may or may not be the owner.

Retirement or Sheltered Housing

A form of housing with design, size and other features, which are particularly suitable for occupation by older people and which, for the purpose of such occupation, is provided with facilities substantially different from those of ordinary housing.

Scottish Charity

To have charitable status, an organisation must be able to demonstrate that its activities provide or are intended to provide identifiable benefit to the public or a section of the public. All Scottish charities must be entered in the Scottish Charity Register. Some housing associations are Scottish charities.

Scottish Housing Regulator

The Scottish Housing Regulator regulates registered social landlords and the landlord and homelessness services of local authorities. It protects the interests of tenants and other service users.

Service Charge

An amount paid or payable by an owner in respect of services, repairs, maintenance, improvements, insurance or costs of management. The amount may vary according to the costs incurred or to be incurred and is normally a fixed proportion of the total costs of running the development.

Abbreviations

The following standard abbreviations are used throughout this Code.

‘ARHM’ means the Association of Retirement Housing Managers.

The 2003 Act is the Title Conditions (Scotland) Act 2003.

The 2004 Act is the Tenements (Scotland) Act 2004.

Any references to legislation in this Code are references as amended at the time that the Code is published and to any equivalent statutory provision that applies in Scotland only.

1.0

Service Charges - Budgeting and Collection

Budgeting

1.1 Managers **should** use proper care in the preparation of budgets using the best information available. Budgets **should** be reasonable taking into account such factors as the age and condition of the building and plant, and maintenance and other works anticipated. Managers **should** seek quotations or estimates from contractors wherever possible before fixing the budget.

1.2 Managers **must not** give artificially low forecasts of service charges. In the case of new developments where warranties may replace contracts in the initial period, managers **should** prepare the budget on the assumption of a normal full year's costs.

1.3 Managers **should** consult owners and owners' associations on budgets, normally once a year, prior to any review of or increase or decrease in the service charge. Managers **should** hold an annual budget meeting at a time and place convenient to owners, to which all **should** be invited. Managers **should** give a minimum of 2 weeks notice of the meeting and send copies of the proposed budget to all owners to arrive at least 7 days in advance of the meeting. Managers **should** confirm in writing any commitments or budget changes made at the meeting (see also paragraphs 10.11 to 10.15 of this Code).

1.4 Managers **should** present budgets in a standard format compatible with the format of annual accounts to allow ease of comparison by owners.

1.5 Managers **should** explain to owners any significant variations between the current level of expenditure and the budget for the year following and give reasons.

Collection of Service Charges

1.6 The terms of the Deed of Conditions will govern the frequency and method of service charge collection and payment.

1.7 Once a year upon request, managers **should** make available to any owner a statement of service and other charges demanded of and paid by him.

Debt Recovery

1.8

Managers **should** have systems in place to ensure the regular monitoring of payments due from owners. Prompt action **should** be taken within 6 weeks to inform owners of amounts outstanding and to agree arrangements for their subsequent collection or as dictated by the Deed of Conditions.

1.9

If requested by an owner, managers **should** offer guidance on the range of state benefits available to help meet service charges, and/or indicate where further advice on benefits and debt counselling can be obtained and provide the name and address of agencies concerned.

1.10

Managers **should** offer to meet with an owner who owes charges to explore options for repayment before taking legal action. Managers **should not** take legal action without giving notice of their intention as required by the Deed of Conditions; such warning to include a suggestion that the owner seek advice on the consequences of non-payment. Consideration **should** also be given to resolving the matter through alternative dispute resolution rather than through the courts.

Costs of Services for Unsold Homes Prior to Their First Sale

1.11

Managers **should** ensure that no contribution is sought from owners to meet service costs attributable to unsold homes prior to the first sale of those units. Appropriate contributions to services charges, including reserve funds, for unsold homes prior to first sale **should** be sought from the developer. Managers **should not** enter into a management agreement that unfairly restricts contributions from developers for the cost of services for unsold homes prior to their first sale.

2.0

Accounting for Service Charges

Bank Accounts

2.1 Managers should open a separate bank account for each development or one or more separate client accounts for any service charge monies held. The accounts should have the description 'client account' in the title.

2.2 These accounts **should** be held at an approved bank or building society.

2.3 Managers **should** tell those whose money they are holding:

- a) the name and address of the institution where their money is held;
- b) the account number and name;
- c) whether or not it is an interest bearing account; and
- d) the withdrawal notice period and any restrictions on withdrawals.

This information may be conveniently given when distributing annual statements of account.

2.4 Any interest earned from these bank accounts belongs to the client or development. Managers **should** ensure that a reasonable rate of interest is paid taking into account all relevant factors e.g. prudent investment and accessibility of funds.

Regular Statements of Account

2.5 Managers **should** supply to all owners regular statements of account within six months of the end of each accounting period.

2.6 Managers **should** present the budget and statement of account in a similar format to facilitate comparisons by owners.

2.7 The regular statements of account **should** include for each development an income and expenditure account and a balance sheet showing any reserve funds held together with the aggregate amount standing to the credit or debit of the development.

Audit of Accounts

2.8 Managers **should** have the regular statements of service charge accounts audited by an independent accountant unless that is not the wish of the majority of owners.

2.9

The auditor **should** be required to report whether in the auditor's opinion the accounts represent a fair summary of costs, show how the costs are reflected in service charges and are sufficiently supported by accounts, receipts and other documents which have been produced to him. Managers **should** obtain a statement from the auditor that explains the nature and limitation of the checks that have been undertaken.

2.10

Managers **should** be prepared to answer the auditor's questions on significant items of expenditure as well as on variations between estimated and actual expenditure and other related matters.

Right to Inspect Supporting Documents to Accounts

2.11

Managers **should** arrange, if requested by any owner, for all invoices and receipts supporting the most recent statement of account to be made available at a convenient time for inspection by owners at their development, and for the owner to take copies if required. The manager may make a reasonable charge for such an inspection.

Treatment of Surpluses and Deficits

2.12

Managers **should** provide a written explanation to all owners of how deficits and surpluses will be treated, how deficits will be recovered and surpluses credited.

2.13

Managers **should not** invoice owners for a deficit until audited accounts have been distributed.

2.14

Surpluses should be repaid to owners promptly or credited against the next payment(s) of service charge due.

3.0

Management Services and Fees

The List of Management Services

- 3.1** Managers **should** enter into a written management agreement with their clients which sets out their services and fees.
- 3.2** Managers **should** provide to all owners a list of management services that are paid for in the management fee.
- 3.3** The list of management services will include some or all of the following. (There may be other services performed by managers not shown below and these should also be identified).
- Opening and administering bank accounts.
 - Preparing and distributing service charge estimates.
 - Collecting service charges.
 - Accounting for service charges.
 - Providing information to auditors for the production of annual statements of account.
 - Collecting routine service charge arrears but not taking further action requiring legal work.
 - Providing management information to owners, including translations if required.
 - Liaising with owners' associations (liaison beyond that which is the normal service level may be charged as an extra - owners' associations should be informed in advance of any charges).
 - Administering buildings and other insurance.
 - Providing professional indemnity insurance.
 - Employing management staff (excluding development-based staff).
 - Entering into and managing maintenance contracts.
 - Inspecting the property to check condition and deal with any necessary repairs.
 - Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning.
 - Periodic health and safety checks but not specialist checks and tests.
 - Consultation on management matters and major works.
 - Holding annual meetings with residents.
 - Regular visits to supervise house managers.
 - Drawing up and reviewing risk assessment plans.
 - Recruiting and training of house managers.
 - Preparing specifications, obtaining tenders and supervising major works.
 - Fees for specialist advice on assessment of major repairs and decoration.
 - Facilitating replacement cost assessments for insurance purposes on buildings and landlord's contents.

- Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary.
- Providing copy documents including insurance policies, copies of invoices and receipts.
- Keeping records of owners.
- Keeping clients advised on management policy.
- Employing and working with advisors of a specialist nature.
- Auditing of development accounts.
- Recovery of unpaid service charges or non-compliance with Deed of Conditions including instructing solicitors and giving court evidence.

The List of Extra Services Attracting Additional Charges

3.4 Managers **should** agree in writing the basis for charging for extra services as part of the management agreement.

3.5 Managers **should** provide to all owners a list of extra services that are not charged elsewhere within the service charge and that are subject to additional charges not included in the management fee. This list **should** explain how these services would be charged for, if it is possible to do so in advance.

3.6 If a manager proposes to move a service or task from the list of services included in the management fee to the list of services with additional charges then the manager **should** undertake a consultation exercise with all owners affected.

Calculation of Fees

3.7 Managers **should** charge management fees which are reasonable having regard to the services provided.

3.8 Managers **should** calculate management fees as an average cost per dwelling within a development. The use of an average to calculate fees does not mean managers shall not apportion fees to owners according to the basis set out in the Deeds of Conditions. Managers **must** apportion the total fees for the development according to the fractions, percentages or other rules set out.

3.9 Managers **should** identify management fees separately in service charge budgets and accounts presented to owners and residents.

Commissions

3.10 Managers **should** declare to owners on request any commissions (e.g. insurance commissions) and all other sources of income arising out of the provision of services to their developments,

and be able to demonstrate that any service involving receipt of commission represents good value for money.

Applications for Permissions and Consents

3.11

Managers **should** reply to applications for permissions or consents arising out of the Deed of Conditions in a reasonable time and where the application is refused give reasons. See also para. 15.12 for special conditions regarding applications for permissions and consents from disabled persons.

4.0

Repairs and Maintenance

4.1 The manager **should** undertake to organise all necessary repairs and renewals to those parts of the buildings in the development for which he is responsible, as may be specified in the Deed of Conditions.

4.2 Managers **should** set out in writing the respective repairing obligations of manager and owners and also how owners **should** report matters requiring repairs.

4.3 Managers **should** provide at all times a service that is as cost effective as possible.

4.4 Managers **should** set out in writing as part of the owners' handbook (see Appendix 1 of this Code) how owners should report matters requiring repair. They **should** publish target time scales for the completion of repairs which are their responsibility.

4.5 Managers **should** arrange for maintenance work to be undertaken by either staff or approved contractors who provide a customer-orientated and competitively priced service.

4.6 Managers **should** have agreed systems in writing which will enable owners to seek assistance in the event of an emergency arising out of normal working hours.

4.7 Where the repair works are necessary but not urgent managers **should** seek to group them in the interests of economy.

4.8 The manager **should** give 2 weeks' notice to owners of repairs, other than emergency repairs, or improvements that require access to individual properties.

Cyclical and Planned Maintenance

4.9 Managers **should** draw up and implement an adequate and cost effective programme of planned or cyclical maintenance for communal parts of the development together with all plant and services that require regular maintenance (including the maintenance and replacement when necessary of communal furniture and fittings). Managers **should** make a realistic assessment of the cost of that programme and include an appropriate item in the proposed annual budget for consultation with owners.

Major Repairs and Reserve Funds

4.10 Managers **should** arrange all necessary major repairs and

renewals to the buildings to ensure that the development is kept up to a reasonable standard of repair and decoration.

4.11 Managers **should** maintain reserve funds to defray the cost of major repairs and renewals whenever possible.

4.12 Any contributions to a fund **should** pass the test of reasonableness.

4.13 Contributions to funds **should** be calculated by the life-cycle costing method for specific building elements and refurbishment of communal areas, and **should** be based on the condition of and be specific to each development. Life-cycle costing is the estimating of the life of each component of the building or development and its replacement cost. A schedule is put together of the components for the development which will demonstrate how much will be required to save for replacement of components as they fall for replacement.

4.14 The replacement cost of building elements **should** include V.A.T. where applicable and the cost of any professional or other fees that may be incurred in carrying out works to those elements in the future.

4.15 Managers **should** consider annually whether a review of the calculation of the adequacy of funds is appropriate.

4.16 If a manager intends to introduce a new method of calculation of contributions to funds, then the manager **should** carry out a consultation exercise with owners.

4.17 Managers **should** make available to any owner on request a copy of the method used to calculate reserve fund contributions.

4.18 Managers **should** only transfer service charge funds to reserve funds in accordance with the provisions made in the annual budget for the service charge.

4.19 Managers **should not** seek to transfer any actual or potential surpluses on service charges to reserve funds until the annual accounts have been audited and consultation has taken place with owners in accordance with paragraphs 10.3 – 10.10 of this Code.

4.20 Managers **should** hold all contributions to reserve funds in trust where appropriate.

Consultation on Major Works

4.21 Managers should obtain the agreement of owners before disbursing any resources in a reserve fund to meet the cost of repairs and maintenance.

Defects in New Buildings

- 4.22 Managers **should** ensure that staff are aware of the terms of the defects and structural warranty offered to owners in respect of new dwellings.
- 4.23 While the warranty on a new dwelling is a contractual matter between the purchaser and the builder, managers **should** be prepared both to offer advice to owners on the terms of that warranty and the steps they **should** pursue if they wish to make a claim, and also to initiate claims under the common parts warranty if any.
- 4.24 Except by agreement with owners or in an emergency (whereupon managers **should** endeavour to recover the costs), managers **should not** spend development funds rectifying defects that should be attended to under the terms of a defects or structural warranty. Care **should** be taken not to invalidate the terms of a warranty.

5.0

Contract Law

Provision of Services

5.1 Managers **must** comply with all of the provisions contained within the Deed of Conditions relating to the development as to the nature and quality of services to be provided to owners and how those services are to be charged for. If managers do more than the Deed requires, they may not be able to recover the costs.

5.2 Managers **should** ensure that services are provided or arranged in an efficient and cost-effective way and in a manner which provides value for money for owners. Managers using affiliated companies **should** make this clear at the outset and obtain alternative quotes at least every three years.

5.3 Managers **should** monitor the quality and efficiency of services provided and publish target time scales for the delivery of services, where appropriate, taking into account the views of owners. Managers **should** take reasonable action to improve services based upon feedback from such monitoring.

5.4 Managers **should** consult on the quality and efficiency of all contracts for services at the annual meeting and take into account the views of owners.

Emergency Alarm System

5.5 Managers **must** use their best endeavours to ensure that any development's emergency call system is kept fully operational and that arrangements are made to monitor and respond to emergency calls from residents.

Master Keys

5.6 Managers **must** ensure that all master keys are accounted for, are kept in a safe and secure place and are only used by authorised personnel in appropriate circumstances. The manager or house manager **should not** enter a dwelling without prior written consent, except in the case of an emergency.

Other Services

5.7 Managers **should** take appropriate steps to control access into buildings on developments so as to establish, as far as possible, a secure environment for residents while ensuring access for emergency services. Managers **should** make arrangements for emergency out of hours access to facilities such as utilities and fire alarms.

Contract Law

Contract Law

Contract Law

5.8

Managers **must** arrange for furniture, fittings, equipment and carpeting in any common room, laundry, guestroom or other communal room or area to be maintained, redecorated and renewed when necessary subject to consultation with owners.

Contract Law

5.9

Managers **must** arrange for the gardens and grounds to be maintained to a standard consistent with the quality of the development and use reasonable endeavours for paths, driveways and car parks to be kept in a safe condition. Managers **must** ensure that gutters, downpipes and gullies are kept clear.

5.10

Where it is proposed to provide an additional service not recoverable under the terms of the Deed of Conditions, managers **should** make arrangements that will mean that only those owners who benefit bear the costs.

Health and Safety

S.2 and 3 of Health & Safety at Work etc. Act 1974

5.11

Managers **must** ensure they comply with the requirements of the Health and Safety at Work etc. Act 1974 together with relevant Health and Safety Codes and Regulations (see Appendix 2) to promote health and safety and protect employees and residents. They **should** ensure that all work is carried out in a safe manner.

5.12

Managers **should** visit developments on a regular basis in order to check on health, safety and fire issues, risk assessments, and health and safety records.

5.13

Managers **must** ensure that arrangements are in place for regular inspections and maintenance of fire alarm systems and equipment (Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006/456), emergency lighting, lifts (Lifting Operation and Lifting Equipment Regulations 1998 No. 2307 as amended) and communal boilers, and that they are all carried out by competent and qualified personnel.

The Electricity at Work Regulations 1989 No.635 as amended

5.14

Managers **must** arrange for fixed and portable electrical equipment to be tested in accordance with the Electricity at Work Regulations 1989 No.635.

The Gas Safety (Installation and Use) Regulations 1998 No.2451 as amended

5.15

Managers **must** arrange for gas appliances for which they are responsible to be maintained in good order and checked for safety at least every 12 months.

Contract Law
The Control Of Substances Hazardous to Health Regulations 2002 No.2677

5.16

Managers **must** arrange for the regular cleaning and redecoration of the internal common parts including corridors, staircases and windows and should ensure that landings and staircases are kept clear from all obstructions. Managers **must** ensure that cleaning materials are stored safely and securely.

Control of Asbestos
Regulations 2006
No.2739

5.17

Managers **must** comply with their obligations under the Control of Asbestos at Work Regulations 2006 as far as they apply to communal areas.

5.18

Managers **should** monitor the quality of water supplies where the supply to properties or communal areas is other than direct from the water provider or where there are communal tanks. The Approved Code of Practice on the Control of Legionella Bacteria in Water Systems is relevant.

Furniture and
Furnishings
(Fire)(Safety)
Regulations
1988 No.1324 as
amended

5.19

Managers **must** comply with the Furniture and Furnishings Regulations 1988 with regard to soft furnishings in communal areas.

Management
of Health and
Safety at Work
Regulations
1999 No.3242 as
amended

5.20

Managers **must** ensure that health, safety and fire risk assessments are undertaken and reviewed on an annual basis or more frequently should the need arise.

Health & Safety at
Work Act 1974

5.21

Managers **must** ensure that appropriate health, safety and fire policies are in place and subject to regular review.

6.0

Variation of Real and Core Burdens

6.1

Real burdens are conditions imposed in the title deeds of a development, normally by the developer. Typical examples would include:

- A requirement for the owner to contribute to the upkeep of common property;
- A provision that the developer has the right to appoint a manager for the development; and
- A minimum age requirement for retirement or sheltered housing.

6.2

Core burdens are a kind of real burden which regulate the use, maintenance, management or services which make the development particularly suitable for occupation by older, disabled or infirm people. Typical examples would include:

- A minimum age requirement;
- A condition about the house manager service; and
- A condition about the use of the emergency alarm service.

Principles of Variation of Real Burdens

6.3

There are a number of ways in which real burdens can be varied, using the procedures set down in the Deed of Conditions or by law. However, core burdens are given protection in law and the manager burden has been made easier to vary by law. The different cases are explained below.

Variation of Real Burdens

6.4

If there is a process in the Deed of Conditions for taking decisions to vary real burdens then this decision making process applies. However, when using the process in the Deed of Conditions, Community Consultation Notices **must** be used (See 6.6 below). Once the consultation period has expired then the process in the Deed of Conditions should be followed.

6.5

Where the Deed of Conditions does not provide any decision making process then majority rules apply and the process set out in law must be followed. The process is the same for varying core and non-core burdens but the majority required for core burdens is higher.

The Default Process for Varying Real Burdens

6.6

A Community Consultation Notice in the prescribed form **must** be sent to all owners in the development when it is proposed to change a real burden. The Community Consultation Notice is for

information and the consultation period must last for at least 3 weeks. An objection at this stage will not stop the process.

- 6.7** Once the consultation period has ended then owners in favour of the variation must sign the varied deed. There is no requirement for a voting procedure. Then notice must be given to the owners who did not sign in a prescribed form.

Calculating the Majority

- 6.8** If the Deed of Conditions contains provisions on how a majority should be arrived at then that is the process to be followed.

- 6.9** If the Deed of Conditions does not contain provisions then the statutory provisions must be used.

- 6.10** Any majority in the provisions in the 2004 Act always refers to one property, one vote. A majority is never calculated by reference to the number of occupants.

- 6.11** Co-owners will receive one vote. If two co-owners disagree then no vote would be counted except for shared ownership dwellings, unless specified otherwise in the Deed of Conditions.

- 6.12** If a developer or manager owns some of the dwellings then they will have a vote for each one. However, if the majority of dwellings in a development is owned by **one** owner, then to obtain a majority the **one** owner would have to obtain the assent of at least one other owner to vary a burden.

- 6.13** The majority required to sign the deed for the variation of a real burden **which is not a core burden** is a simple majority of all owners, unless specified otherwise in the Deed of Conditions.

Objections to the Lands Tribunal

- 6.14** The prescribed notice to owners who did not sign the deed for a variation, as explained in 6.7 above, gives those owners an 8 week period in which to try to stop the change. Any of those owners has the right to apply to the Lands Tribunal for preservation of the burden.

- 6.15** If no owner objects then the Lands Tribunal will certify no application from the minority has been made. If objections are received the Lands Tribunal will consider the proposed variation and make a decision.

Process for Core Burdens

- 6.16** The process for the variation of core burdens is similar to that for other non-core burdens with two important exceptions. So if

the Deed of Conditions contains a process to vary core burdens then it **should** be used. If there are no provisions in the Deed of Conditions then the default process in the 2003 Act **must** be followed.

Variation by Application to the Lands Tribunal

6.17 Any owner has the right to apply to the Lands Tribunal to vary or discharge a burden as it affects their own dwelling.

6.18 The owners of 25% or more of a development have the right to apply to the Lands Tribunal to vary or discharge a burden which affects all or part of the development.

Variation of the Manager Burden

6.19 The 2003 Act made separate provisions for the appointment or dismissal of managers by owners. See Chapter 16 for details.

The Meeting to Inform and Explain

6.20 In addition to the processes above when a variation to a core burden is proposed managers should hold a meeting at a time and place convenient to owners, to which all should be invited prior to beginning the formal process. Managers **should** give a minimum of 2 weeks' notice of the meeting.

6.21 Managers **should** issue documents explaining the proposal(s) to all owners and any documents/papers **should** arrive at least 7 days in advance of the meeting.

6.22 Any documents **should** be written in simple language and should contain:

- A summary
- The objective of the proposal to vary the core burden
- The issue to be addressed
- Who is likely to be affected and how
- Various options, backed up by arguments for and against them, and allowing for other options to be put forward
- A full explanation of the costs of the various options
- The name, address and telephone number of a person with whom owners can discuss the issues prior to the meeting.

7.0

Contractors

- 7.1 Managers **should** only use contractors who possess the necessary skills and experience for the service to be provided.
- 7.2 Managers and the contractors they choose **must** comply with the Construction (Design and Management) Regulations 2007 (SI 2007 No. 230) as amended, where appropriate.
- 7.3 Managers **should** seek to ensure that contractors are courteous, trustworthy and work in a manner that does not cause undue inconvenience to residents.
- 7.4 Managers **should** ensure that contractors respect that they are working in occupied premises and **should** issue contractors with a list of requirements to be followed whilst working at a development.
- 7.5 Managers **should** declare to owners any association or connection they may have with contractors in advance of placing any order with or placing on any tender list that contractor. In such cases, managers **should** ensure that they are able to demonstrate that that contractor represents good value by testing costs in competition with other contractors.
- 7.6 In selecting contractors, managers **should** have due regard to economy, quality and value for money. Managers **should** be aware of the day work rates/call out charges etc. of contractors before work is ordered.
- 7.7 Managers **should** employ contractors that have adequate public liability insurance, or ensure that any public liability claim can be covered through the manager's insurance.
- 7.8 Managers **should** employ contractors that have equal opportunity policy and practice statements for the recruitment and conduct of their staff. Managers **should** also ensure that contractors will take action in the event of any discriminatory act.
- 7.9 Managers **must** take reasonable steps to ensure that all contractors carry out work in a safe manner in compliance with Health and Safety Codes and Regulations (see Appendix 2 of this Code).
- 7.10 With the exception of emergency repair work, all contracted out work with a value of more than the sum specified in the owners' handbook should be subject to a tendering process that can be scrutinised by owners. The documentation relating to the tendering process should be open to inspection by owners on giving reasonable notice.

7.11

Managers **should** have procedures for checking the standard of work carried out by contractors prior to payment of invoices and for taking account of these checks before ordering further work. Managers **should** also take account of the views of owners on the standard of work provided by contractors before ordering further work from that contractor.

7.12

Managers **should** use contractors who are members of a relevant trade organisation wherever appropriate.

7.13

Managers **must** comply with the requirements of Her Majesty's Revenue and Customs under the Construction Industry Tax Deduction Scheme where applicable. Details of this scheme may be obtained from any tax office.

8.0

S.19 of Financial Services & Markets Act 2000

Employer's Liability (Compulsory Insurance) Regulations 1998 No.2573 as amended

Insurance

8.1 Managers who undertake insurance related activities **must** be authorised to do so by the Financial Services Authority.

8.2 Where managers undertake to arrange insurance, they **should** arrange adequate and appropriate cover with a reputable company. The extent of cover will generally include:

- buildings insurance (including the cost of providing suitable alternative accommodation for residents);
- engineering plant insurance (e.g. lift, boilers and ventilation equipment);
- public liability insurance; and
- communal contents insurance (e.g. residents' lounge and guest room furniture).

8.3 Managers **should** make clear in the owners' handbook details of the cover and who is responsible for insuring against different risks including responsibility for insuring household contents.

8.4 Managers **should** ensure that all insurance cover is arranged at good value for money and that the placement of the insurance business, the extent of cover and the premiums are reviewed annually.

8.5 Managers **must** arrange employer's liability insurance and display a current employer's liability insurance certificate at any development where permanent staff are employed. An employer is required to display a copy of the certificate of insurance at a place of business at which he employs staff who may be covered by the insurance.

8.6 Managers **should** consider arranging sickness insurance cover for development-based staff to reduce unpredicted overspends on relief costs, if a house manager is sick for an extended period.

8.7 Managers **should** ensure that there are appropriate systems for ensuring that any expenditure falling within the scope of the insurance policy is properly and promptly claimed under the policy and that the claim is diligently pursued, where necessary.

8.8 Managers **should** keep owners who are due to receive a claims settlement informed on the progress of the claim, or provided with sufficient information to allow them to pursue the matter themselves, and **should not** deduct arrears or other payments due when passing on claims settlements due to individual owners.

8.9

Managers **should** carry adequate professional indemnity insurance based on an assessment of risk.

9.0

House Managers and Other Staff

Appointment

- 9.1 Managers **should** make enquiries into the employment history, relevant personal qualities and background of anyone they are intending to appoint as a house manager. Managers may invite a representative of an Owners' Association to take part in the interview process.
- 9.2 All successful applicants **should** be required to provide the appropriate disclosure certificate from Disclosure Scotland before their appointment is confirmed.

Duties

- 9.3 Managers **should** issue house managers with a job description that clearly defines their duties and responsibilities. Managers **should** also make clear in writing what house managers can and cannot do for owners to protect them from unreasonable demands.
- 9.4 Residents **should** be informed of the house manager's terms of employment, duties and responsibilities and **should** be given a copy of the house manager's job description and hours of duty on request.
- 9.5 Managers **should** issue each house manager with a comprehensive manual which clearly sets out all duties, responsibilities and operating procedures. Issues which **should** always be included are policies on dealing with emergencies and master keys, on the use of communal facilities, on dealing with petty cash and other monies, on authority over on-site contractors, on health and safety including fire safety and on administering medicines/drugs.
- 9.6 Managers **should** ensure that all house managers keep a daily diary recording all significant events on site and dealings with residents (such as emergencies, injuries, disputes and maintenance works) and keep it in a safe place for not less than 6 years. Diaries can be of great help in recalling important facts and actions should these ever be called into question at a later date.
- 9.7 Managers **should** allow individual residents on request to know what is recorded about them in the diary, by providing a copy or extract. Managers **should not** disclose information about any other residents.

- 9.8 Managers **should** make clear to house managers and owners where responsibility lies for repairs to the house manager's dwelling if provided and fixtures and fittings therein as set out in the Deed of Conditions.

Supervision

- 9.9 Managers **should** ensure effective supervision and back-up support for house managers, as the nature of their job means that they can feel isolated. A specific person **should** be available to them to provide help and advice and to ensure they feel part of the management team. That person **should** visit the house manager on the development at least every 8 weeks (on average) and should be able to be contacted by telephone at other times.

- 9.10 The manager **should** ensure that the house manager is following the organisation's proper practices and procedures and is observing the correct hours of duty.

- 9.11 The manager **should** address within 5 working days any difficulties the house manager cannot resolve including any problems in the relations between house manager and owners.

- 9.12 Managers **should** arrange for the relationship between the house manager and the specific person to be monitored.

- 9.13 Managers **should** have policy and procedures to deal with aggressive behaviour towards and harassment of house managers by residents or others. These policies and procedures **should** be notified to house managers. See also paragraph 15.13 of this Code.

- 9.14 Managers **should** set out in the owners' handbook the arrangements for owners to make an input into the manager's appraisal of house manager and other staff. The manager **should** treat as confidential any comments made by owners unless agreed otherwise. Owners who wish to make a complaint against a house manager **should** use the complaint handling procedure of the manager-see chapter 12.

- 9.15 Managers **should** take reasonable steps to ensure that they have arrangements in place to provide holiday and sickness relief cover for house managers.

Training

- 9.16 Managers **should** provide a training programme for each house manager based on the experience and qualifications of that person. This **should** be updated annually to take account of changes in procedures and relevant legislation.

9.17

House managers **should** be offered an induction course shortly after starting work with the organisation; thorough on-site training in procedures and policies; regular skills training including access to recognised training courses and updating on new procedures and organisational changes. Training **should** include awareness of relevant legislation, the terms of the Deed of Conditions and of conditions such as dementia.

10.0

Consultation and Provision of Information

10.1 Managers **should** aim to achieve good and effective communications with owners and any owners' associations and **should** be available to meet owners at their development at least quarterly.

10.2 All communication with owners **should** be accurate, concise and clear.

Consultation on Variation of Real and Core Burdens

SEE CHAPTER 6 OF THIS CODE

Consultation on Management Matters

10.3 In addition to the requirements to consult in Chapter 6 where variations to real and core burdens are proposed, managers **should** consult with all owners on other management matters which are likely to have a significant effect on the quality of services and level of service charges or which will otherwise significantly affect some or all owners.

10.4 Managers **should** choose the most appropriate method of consultation for the matter in question to ensure that owners receive full information. This may include individual correspondence, meetings or newsletters.

10.5 If a meeting is called it **should** be at a time and a place convenient to owners to which all **should** be invited. Managers **should** give a minimum of 14 days' notice of the meeting and any documents/papers **should** arrive at least 7 days in advance of the meeting.

10.6 Managers **should** issue a document or documents explaining the proposal(s) whether or not a meeting is held.

10.7 Any document **should** be written in simple language and **should** contain:

- A summary of the proposal(s);
- The objective and the issue to be addressed;
- Who is likely to be affected and how;
- Various options and arguments for and against each one;
- A full explanation of the costs of the various options;

- A statement on how a decision will be reached after the consultation; and
- The name, address and telephone number of a person with whom owners can discuss the issue prior to the meeting.

10.8 A minimum of 14 days **should** be allowed for comments to be made in writing after issuing documents and/or holding a meeting.

10.9 Managers **should** take account of all comments. Any significant changes **should** normally be agreed by at least a majority of the owners concerned unless the owners are subject to an alternative legally binding arrangement for decision making.

10.10 Managers **should** inform all owners of the outcome and the reasons for the decision taken in writing by letters or a notice on the development notice board.

Annual Meeting

10.11 Managers **should** hold an annual meeting of all owners on each development to allow them to comment on any proposed budget, changes to the service charge, the extent and quality of services provided and other management matters. (This meeting may also be the annual budget meeting, see paragraph 1.3 of this Code.)

10.12 A minimum of 2 weeks' notice of the annual meeting **should** be given to all owners and papers for the meeting **should** be sent to owners to arrive at least 7 days in advance of the meeting.

10.13 The meeting **should** be held at a time and place convenient for owners and **should** be attended by a member of the manager's staff who is responsible for the setting of service charges, and is prepared to answer questions on the general management of the development and other relevant matters.

10.14 Managers **should** confirm in writing any commitments made at the meeting.

10.15 Where the owners reject the proposed budget the manager **should** aim to present revised proposals for approval within 14 days.

Provision of Information

10.16 Managers **should** respond promptly to requests for information from owners and publish target time scales for such responses. All requests **should** be met courteously and within 14 days.

Owners' Handbook

10.17

Managers **should** ensure that all new purchasers of dwellings that they manage are provided with an owners' handbook that **should** contain at least the information set out in Appendix 1 of this Code. Managers **should** also give all existing owners access to the current version of the handbook for their development, and provide a copy to all recognised owners' associations. The handbook **should** be regularly reviewed and updated when necessary.

11.0

Owners' Associations

11.1

Managers **should** have a formal commitment to encouraging properly constituted and democratically run owners' associations at their developments. It is recommended that managers supply literature to owners giving guidance on how to set up and run an association.

11.2

Managers **should** recognise and consult an association which has a membership representing 51% or more of the owners on the development that contribute to the same costs by way of a variable service charge, and where the association has a proper constitution and elected officials. It is recommended that managers **should** retain details of the constitution, officials and membership and ask the association to supply details of any changes as they occur. Managers **should** give notice in writing to the secretary of the owners' association that the association is a recognised association.

Good Relations with Owners' Associations

11.3

Managers **should** endeavour to maintain good working relationships between staff and owners' associations. Generally, good relations can be maintained by proper consultation and keeping associations up to date with any proposed changes or works. However when dealing with owners' associations, managers **should** also remember that they also have a responsibility to, and **should** maintain dialogue with, individual owners not just those who are members of an association.

11.4

Managers are recommended to ensure that information held on associations is reviewed and revised on an annual basis, and that they are informed of the owners who are members and those who have authority to speak on behalf of the association.

12.0

Complaints Handling Procedure

12.1

Managers **should** provide each owner with an up to date copy of their complaints handling procedure or inform them where a copy can be obtained. The procedure **should** include information on how complaints may be made about house managers and contractors. Managers **should** train staff to welcome complaints and value them as a way to learn and improve services.

12.2

The complaints handling procedure **should** state to whom owners should complain in the first instance and the steps they should follow if satisfaction is not obtained at that stage. There **should not** be a requirement that all complaints should be in writing.

12.3

The complaints procedure **should** set down reasonable target time scales for responding to the complaint at each stage of the procedure. There **should** be no more than 3 stages in the procedure excluding any informal local resolution and the final external appeal stage in 12.8 below.

12.4

The complaints procedure **should** ultimately allow the owner the right to a face-to-face hearing with a panel at a senior level in the management organisation.

12.5

Managers **should** offer independent mediation and conciliation as an option for resolving complaints as part of their procedure.

12.6

Managers **should** make owners aware via a communal notice of other organisations which can provide advice or take up complaints. Managers **should** offer maximum cooperation with all recognised advice agencies that handle complaints and requests for information, and with any other intermediary consulted by the owner.

12.7

Managers **should** give all owners access to an independent redress scheme if, after using the manager's complaints handling procedure, they are still not satisfied.

12.8

Managers which are housing associations **should** ensure that owners are aware of instances where they may take complaints to the Scottish Public Services Ombudsman if they are not satisfied with the outcome of the manager's complaints procedure.

13.0

Estate Agents Act 1979 as amended and Property Misdescriptions Act 1991

Resales

13.1

Managers who offer a sales service **must** comply with the Estate Agents Act 1979 and the Property Misdescriptions Act 1991.

13.2

Managers may offer a sales service to owners but this **should** only be one option. Owners **should** also have the option of finding their own buyer and/or appointing an estate agent of their choice except where the property has been built with the aid of public funding intended to reduce the price to purchasers. In that case, the new purchasers may be limited to those meeting the criteria required as a condition of public funding.

13.3

Managers **should not** make any charge or require any payment on resale except where it is stated or implied in the Deed of Conditions or where a service has been offered and accepted at an agreed fee. Any charge **should** be reasonable. Charges or payments arising on a resale are usually in respect of the following:

- For acting as an agent when selling a property;
- For approving a buyer nominated by the seller;
- For supplying information for pre-purchase information, copies of insurance and statements of accounts;
- For any legal service provided;
- For any service charge arrears or other outgoings provided for by the Deed of Conditions up until the date of the sale, including any interest chargeable; and
- For reserve fund contributions payable on resale.

13.4

It is unlawful for anyone selling or managing property to racially discriminate in any of the following ways:

- In the terms on which a property is offered for sale;
- By refusing to let a person buy; and
- By treating a person less favourably than others who want to buy.

13.5

Managers **should** have regard to the statutory Code of Practice on Racial Equality in Housing (Scotland) published by the Commission for Racial Equality.

13.6

The Disability Discrimination Act 1995 makes it unlawful for those involved with selling and managing property to discriminate against disabled people.

13.7

In addition, when selling and managing property managers **must not** discriminate on the basis of gender, religion or sexual orientation.

Race Relations Act 1976 (as amended by Race Relations (Amendment) Act 2000)

Disability Discrimination Act 1995

Sex Discrimination Act 1975
Equality Act 2006
Equality Act 2006 (Sexual Orientation) Regulations 2007 / 1263

13.8

Managers have a duty to report to the Scottish Crime and Drug Enforcement Agency if they know or have reasonable cause to suspect that anyone connected to their business is or has been involved with money laundering. Managers are obliged to report without the knowledge or consent of the person suspected.

14.0

New Developments

14.1

Before agreeing with a developer to manage a development, managers **should** be sure they can provide:

- a) reasonable charges; and
- b) an efficient and effective management service.

14.2

The Unfair Terms in Consumer Contracts Regulations 1999 No. 2083 apply to any Deeds granted after 1 July 1995. Managers **should** be aware of the regulations when considering suitable forms of Deed for new developments.

14.3

Managers **should** ensure, whenever possible, that they are involved at an early stage and consulted by the developer about the design, management and maintenance costs; the size and location of the house manager's accommodation and office; communal facilities; grounds; and the standard and quality of materials and equipment. At this stage, decisions can be made to ensure that the facilities, location, design and construction of the proposed development will complement the management service offered and ensure value for money for owners.

14.4

Managers **should** enter into a written legal agreement with the developer.

14.5

The agreement **should** contain provisions detailing how and on what terms it may be possible for the first appointed manager to pass on some or all of the obligations in the agreement to another manager.

14.6

Managers **should** ensure that there is a clause in the management agreement that requires the building to be covered by an approved warranty scheme.

14.7

Managers **should** be cautious about accepting the management of developments that are offered by a developer towards the end of the building contract or when the developer does not seem interested in advice from the potential manager.

14.8

Managers **should** carefully and professionally calculate the first year's service charge using up to date information about the development, in the form of plans and specifications provided by the developer and considering all likely future costs. Managers **should** do all they can to ensure that information about services and charges provided by the developer is accurate, comprehensive and not misleading.

14.9

Managers **should not** work with developers who wish to artificially reduce initial service charges to improve sales.

- 14.10** Managers **should** be wary of agreeing arrangements which will lead to unnecessary future expense on the service charge account e.g. charges for leasing or poor standard equipment. Where such arrangements are agreed, proper provision **should** be made for likely future costs, and leasing arrangements **should** be brought to the attention of prospective purchasers.
- 14.11** Managers **should** try to ensure that the Deed of Conditions contains provision for establishment of a reserve fund adequate for all long-term major repairs, renewals and improvements.
- 14.12** Managers **should** seek to ensure that management starts before the first purchaser moves into the development. It is important that scheme managers and other management staff are ready to provide the agreed services immediately. There **should** be effective liaison between the sales staff, management staff and house manager to ensure this.
- 14.13** Managers **should** provide developers with an Owners' Handbook containing the information set out in Appendix 1 to be passed to potential purchasers' solicitors.
- 14.14** Managers **should** use their best endeavours to brief sales staff about the management services including the role and responsibility of the house manager and other management matters.

15.0

s.1 of the Human Rights Act 1998

Equality and Diversity

Prohibition of Discrimination

15.1

Managers **must** ensure that they follow the European Convention on Human Rights as incorporated into UK law. In particular article 14 prohibits discrimination. The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

15.2

In the provision of services or the sale of properties, managers **must** ensure that there is no discrimination within their organisation on the following grounds:

- a) colour, nationality, ethnic or national origin (Race Relations Act 1976);
- b) disability (Disability Discrimination Act 1995);
- c) sex (Sex Discrimination Act 1975);
- d) sexual orientation (Equality Act 2006 and Equality Act 2006 (Sexual Orientation) Regulations 2007/1263; or
- e) religion (Equality Act 2006).

They **should** also ensure that there is no discrimination on the grounds of marital status or age.

15.3

Managers who are housing associations may be subject to public sector equality duties on disability and gender to have regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity.

Equal Opportunities

15.4

Managers **should** have an equal opportunities policy statement, procedures and practices covering management, maintenance, sales and recruitment.

Adult Protection

15.5

Managers **should** have policy and procedures in place to prevent and deal with allegations of harm to older people appropriate to the size of the organisation and other circumstances.

Age Discrimination

15.6

Managers **must not** discriminate on the grounds of age in the

The Employment Equality (Age) Regulations 2006

workplace and vocational training.

Racial Discrimination and Harassment

15.7 Managers **should** have anti-harassment policy and procedures in place to prevent and deal with harassment of residents and staff appropriate to the size of the organisation and other circumstances. The policy **should** support victims of discrimination or harassment.

15.8 Managers **should** make sure that they can communicate effectively with all owners and make arrangements to translate material if needed.

Race Relations Act
1976

15.9 Managers or their staff **must not** discriminate or harass a person on racial grounds, or in the terms on which they offer to sell or let properties.

Disability Discrimination

Disability
Discrimination Act
1995 (c.13)

15.10 Managers **must not** discriminate against disabled people when letting or selling property.

Disability
Discrimination Act
2005 (c.13)

15.11 The Disability Discrimination Act 2005 was implemented from December 2006. It puts managers under a new duty to make reasonable adjustments to premises to assist disabled persons. This duty is in three parts: adjustments to policies, procedures and practices; changes to terms of lettings; and the provision of auxiliary aids. The duty does not apply to the common parts of developments nor does it require managers to change the physical features of premises. Managers **should** follow the code of practice-rights of access issued by the Disability Rights Commission in 2006.

Disability
Discrimination Act
2005 (c.13)

15.12 The Disability Discrimination Act 2005 also strengthens the rights of disabled persons who apply for consents to alter or improve their homes (not common parts) where the Deed of Conditions contains clauses that allow improvements or alterations.

Anti-Social Behaviour

15.13 Managers **should** have policies and procedures in place to prevent and deal with anti-social behaviour appropriate to the size of the organisation and other circumstances.

Data Protection

Data Protection Act
1998

15.14 Managers **must** adhere to the provisions of the Data Protection Act 1998 and **should** recognise standards of good practice.

16.0

Transfers of Management Responsibilities

Manager Burdens

16.1 Any condition in a Deed of Conditions that gives the developer the right to appoint a manager indefinitely for the development has been abolished.

16.2 If the Deed of Conditions does contain a manager burden the 2003 Act requires that the power to appoint or dismiss a manager **must** pass to the owners at the very latest 3 years from the date that the manager burden was made, usually the date that the first dwelling on the development was sold. The manager burden will end sooner if the developer has sold all the dwellings before the end of the 3 year period.

Dismissal of Managers by Owners

16.3 If owners wish to dismiss a manager then the majority required will depend upon which of the following three circumstances apply.

- If the Deed of Conditions provides for a procedure by which such a decision is taken then that must be followed.
- If the Deed of Conditions does not have provisions then a simple majority will be able to make a decision.
- Regardless of what the Deed of Conditions says a majority of two-thirds of owners will always be able to appoint or dismiss a manager, subject to para. 16.2 above.

Voting on Dismissal

16.4 When calculating a majority each property must have one vote. Co-owners receive one vote and if they disagree then no vote is counted, unless specified otherwise in the Deed of Conditions.

Procedures for Transfers of Management

16.5 Where legal rights are being used to transfer management, managers **should** always ensure that they comply with the requirements laid down by the legislation, and also with any direction given by a court. The procedures that follow in this section are good practice that managers and owners are recommended to use in addition to any legal requirements where owners are seeking to change their manager using their legal rights.

- 16.6** If a prospective manager is invited to meet a group of owners seeking to change their current manager, then the prospective manager **should** only advise the current manager of the approach, if requested to do so by the owners.
- 16.7** The current manager **should** provide owners seeking to change managers with any reasonable information within 28 days of a request. A reasonable charge may be made for copying of any documents.
- 16.8** Where a group of owners wish to choose a prospective new manager then the prospective manager **should** provide the group with information in a format that allows owners to compare alternative managers.
- 16.9** The information to be provided by managers **should** include:
- a budget for services in the same format as the current manager's budget;
 - a plan explaining how services will be delivered and to what standard;
 - any changes proposed to current services provided should be clearly identified;
 - what will happen to any existing house manager(s);
 - the management fees and list of management and extra duties;
 - the draft management agreement that is proposed to be used; and
 - and any other costs and benefits that will affect the development.
- 16.10** Prior to a decision on a transfer proposal, a meeting at a time and place convenient to owners **should** be called to which all owners **should** be invited for the purpose of enabling any manager involved in the transfer proposal to make a presentation and to be questioned by owners. A minimum of 2 weeks' notice of the meeting **should** be given and all owners **should** have the information specified above at least 7 days in advance of the meeting.
- 16.11** The decision to dismiss and/or appoint a new manager by owners **should** be taken by a secret ballot.
- 16.12** The ballot paper **should** contain the motion to be considered. It **should** state clearly the majority required to pass the motion, who will count the ballot and how the count will take place.
- 16.13** The ballot papers **should** be returned to and counted by a person or organisation independent of the manager, owners' association and any owner. It **should not** be possible for the votes of any owner to be identified by other owners or managers.
- 16.14** An independent person **should** scrutinise the ballot papers.

- 16.15** Each owner may cast one vote and joint owners will receive one ballot paper. Where the owner is not resident the ballot paper **should** be sent to any alternative address provided.
- 16.16** All owners **should** be informed of the result of the ballot (in writing by letter or a notice on the development notice board) including the total number of votes counted for, counted against, the abstentions from voting on the motion, and any votes rejected from the count with the reason for rejection.
- 16.17** Once a decision to transfer management has been taken then managers **should** cooperate promptly and fully with the handover of records and accounting information that are required. See Appendix 3.

House Managers and Transfers

- 16.18** Managers and owners **must** comply with the TUPE regulations (Transfer of Undertakings Protection of Employment Regulations). Managers **should** be particularly sensitive to the needs of house managers and other employees at the development when a transfer of management is proposed. Professional advice **should** be taken about employment rights.

17.0

Care and Housing Support Services

17.1

Managers who provide care services to residents as an additional arrangement **must** comply with the Regulation of Care (Scotland) Act 2001. Managers **must** register the service with the Care Commission¹ if it falls within the definition of a care service under the Act. Service standards are set out in the regulations on requirement for care services and the National Care Standards.

17.2

When employing a member of staff to deliver a care or housing support service, managers **must** ensure that both they and staff members understand and comply with the Code of Practice established by the Scottish Social Services Council for all employers and workers in the social services sector in Scotland. It may be necessary for members of staff to register with the Scottish Social Services Council².

17.3

Managers **should** ensure that:

- a) Enquiries are made into the employment history, relevant personal qualities and background of anyone they are intending to appoint as care staff including the requirement for a Disclosure Scotland check;
- b) Staff have a clear job description and the role, responsibilities and duties of each member of staff and the care service are clearly defined and explained to residents, and any additional charges are clearly specified;
- c) If care staff are to be provided to help specific owners on a regular basis, then those owners need to know exactly when this will happen and who will give them this help. This **should** be explained and written down clearly and the owner and the manager **should** each keep a copy;
- d) Regular reviews are carried out to establish that the owner and carer are satisfied with the service and confirm that it continues to meet the owner's needs;
- e) A complaints procedure is established with the name of the relevant person to contact if a complaint is to be made or redress of grievance sought. Owners **should** be informed that they can approach the Care Commission with complaints;
- f) The care staff are made aware of any relevant legislation or regulations which will need to be adhered to e.g. the Adult Support and Protection (Scotland) Act 2007, Health and Safety at Work, Food Hygiene etc;
- g) Adequate insurance cover is provided to cover the relevant care tasks;
- h) Appropriate policies and procedures are in place regarding

¹ www.carecommission.com

² www.sssc.uk.com. The SSSC registration team can be contacted on 0845 60 30 891 for more information

medication, in line with the care standards governing the type of care service provided;

- i) Care staff keep accurate notes and records and liaise where necessary with other agencies such as GP's, other health workers and social work services, in accordance with the Data Protection Act.

17.4

Owners may be eligible for financial assistance with support services such as the house manager and alarm response system, subject to meeting the requirements of the local authority. Managers **should** meet reasonable requests from owners for additional information required to support their applications.

Appendix 1

Owners' Handbook

The Handbook referred to in paragraphs 10.17 and 14.13 of this Code **should** contain the following information, which **should** be clearly and fully described using simple language. The handbook may also be called a purchasers' or owners' information pack or owners' or residents' handbook, or such other name as the manager thinks appropriate. A generic version of the handbook pointing out that each scheme may vary in detail, is an acceptable way of producing a handbook.

- Details of the developer including name and address.
- Details of the manager including name and address, its role and whether it has any business relationship with the developer.
- A summary of the Deed of Conditions as they apply to the development.
- A description of the duties of the house manager, including hours of service, and how back-up support or emergency cover is provided during the periods of absence, together with details of the emergency alarm system and how it works.
- A description of all the services for which the owner is charged.
- A list of common repairs which are the responsibility of the manager to carry out using service charge monies, how owners should report repairs and target time scales for the completion of repairs.
- A full, clear, complete and unambiguous breakdown of all periodic or one-off charges that owners will be expected to pay, together with any necessary explanations including a time scale for their review.
- Information on consultation and complaints handling procedures and on any proposed or existing owners' associations.
- Any detailed rules concerning the management of the development.
- Re-sale arrangements including the requirement to notify the manager.
- The handbook should indicate how copies of the manager's policies on equal opportunities, confidentiality and access to information may be obtained.
- Details of how surpluses and deficits will be treated.
- Details of the management and use of the reserve fund including accountability to owners.
- Procedures for debt recovery.
- Details of how owners can report to the manager on the performance of house managers and other staff.

Appendix 2

Health and Safety Codes and Regulations

Please note that this list is not an exhaustive list. A full list of publications can be obtained from the Health and Safety Executive.

APPROVED CODES OF PRACTICE (ACOP) & GENERAL GUIDANCE	REFERENCE ID NUMBER
Essentials of Health & Safety at Work	0-7176-6179-2
First Aid at Work (Health and Safety (First Aid) Regulations 1981)-ACOP	0-7176-1050-0
Guide to RIDDOR 1995	0-7176-2431-5
The Management of Health and Safety At Work Regulations 1999-ACOP	0-7176-2488-9
The Control of Legionella Bacteria in Water Systems-ACOP	0-7176-1772-6
Work with Materials Containing Asbestos-ACOP	0-7176-6206-3
A Comprehensive Guide to Managing Asbestos in Premises	0-7176-2381-5
The Management of Asbestos in Non-Domestic Premises-ACOP	0-7176-6209-8
Control of Substances Hazardous to Health Regulations 2002 as amended	0-7176-2981-3
Health and Safety Law Poster	0-7176-2493-5
Workplace (Health, Safety and Welfare) Regulations 1992-ACOP	0-7176-0413-6
The Health and Safety (Safety Signs and Signals) Regulations 1996	0-7176-0870-0
Personal Protective Equipment at Work-Guidance on Regulations 1992	0-7176-6139-3
Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)	0-7176-2461-1

APPROVED CODES OF PRACTICE (ACOP) & GENERAL GUIDANCE	REFERENCE ID NUMBER
Safe Use of Lifting Equipment-ACOP	0-7176-1628-2
Safety in the Installation & Use of Gas Systems & Appliances	0-7176-1635-5
The Manual Handling at Work Regulations 1992-Guidance	0-7176-2823-X
Work with Display Screen Equipment-Guidance	0-7176-2582-6
Electricity at Work-Safe Working Practices	0-7176-2164-2
Maintaining Portable & Transportable Electrical Equipment-Guide	0-7176-2805-1
Maintaining Portable Electrical Equipment in Offices-Guide	0-7176-1272-4
The Provision and Use of Work Equipment (PUWER)-ACOP	0-7176-1626-6
The Work at Height Regulations 2005 - a brief guide	0-7176-2976-7

To order the above publications from the Health and Safety Executive:

Tel.: 01787 881165

Fax.: 01787 313995

E mail: hsebooks@prolog.uk.com

For general information about HSE contact:

E mail: hseinfo@natbrit.com

Website: www.hse.gov.uk

Appendix 3

Arrangements for the Transfer of Management Responsibilities

1. Where a decision has been taken to change the manager of a development, the outgoing manager **should** provide the incoming manager with the following information:

- the contract of employment and conditions of service of the house manager and any other employees;
- the name and address of the central emergency alarm provider;
- details, including dates, of all maintenance contracts;
- details, including dates, of all insurances held;
- current budgets and latest accounts for the development, including anticipated surpluses or deficits and reserves or sinking funds;
- details of all heritable property held; and
- an inventory of all moveable property held.

2. The incoming manager **should** check the information provided by the outgoing manager. The incoming manager will also be responsible for collating residents' current personal and medical details.

3. The incoming manager **should** ensure, to the satisfaction of the owners and the outgoing manager, that the obligations of retirement or sheltered housing included in the Deeds of Conditions will be accepted in a management agreement and that the outgoing managers' responsibilities for ongoing services will cease at the date of transfer.

4. The incoming manager **should** ensure continuity of cover in respect of the following services:

- the house manager;
- the emergency alarm;
- essential maintenance services, such as the emergency alarm, fire alarms and equipment and door entry systems;
- insurance;
- the vetting of prospective purchasers to ensure compliance with the Deeds of Conditions; and
- concessionary television licence (where appropriate).

5. The incoming manager **should** ensure that, in agreement with the owners, adequate provision is made to deal with the following:

- the transfer of staff e.g. house manager(s) and cleaner(s), or the liability for redundancy;
- the transfer of accommodation e.g. the house manager's accommodation, guest room etc; and
- legal fees and other expenses associated with the transfer, including on the management agreement, staff and property transfers.

Appendix 4

Code of Conduct for Managers

This Code of Conduct for Managers and Scheme Managers sets out established principles of the way that managers **should** perform their roles. The ARHM wishes to thank the Centre for Sheltered Housing Studies for its assistance in publishing these principles. Managers **should** be able:

- 1) To offer equal opportunities and fair treatment to all residents without discrimination on account of race, gender, disability, religion, age or sexual orientation.
- 2) To recognise, respect and safeguard the individuality and personal rights of each resident whilst acknowledging the responsibility to others, and to encourage residents to accept their responsibility towards each other.
- 3) To understand and respect the confidentiality of knowledge and information relating to individual residents and the employer.
- 4) To facilitate independence and the well being of residents both as individuals and within the group as a whole.
- 5) To be sensitive and impartial in the delivery of services.
- 6) To act always with honesty and integrity.
- 7) To ensure that professional responsibility is never sacrificed for personal interest.
- 8) To establish and maintain high standards of personal conduct and professional relationships.
- 9) To acknowledge the need for continuing professional training and self-development.
- 10) To ensure that internal procedures relating to statutory obligations of the employer are understood and implemented.
- 11) To understand the role of other service providers and significant people in the lives of residents and be committed to working effectively with them.
- 12) To be aware of and to accept a responsibility to contribute to the setting of objectives, policies and procedures of the employer.

Appendix 5

Objects of the Association of Retirement Housing Managers

The ARHM represents management organisations who together manage over 95,000 private sheltered housing flats, houses and bungalows in England and Wales. The Association is committed to high standards and ethics in the management of private sheltered housing.

A separate code for Scotland has been drawn up in recognition of the different legal status and position of many residents. It is based upon, and draws its content and format from the codes in England and Wales.

The main objects of the ARHM are to:

- Promote high standards of practice and ethics in the management of retirement housing and in the provision of services to residents.
- Set standards for membership of the Association and promote quality and professionalism through training and education of members.
- Monitor standards of members including implementing a compliance-testing regime so that further improvements in standards can be made.
- Consider and comment on matters affecting the Association and retirement housing, and to promote the views of the Association in the business, social, educational and political communities.
- Investigate and determine complaints against members.
- Provide the principal forum for the discussion and progression of issues facing retirement housing.
- Promote the benefits of retirement housing.
- Provide and disseminate information on retirement housing and to act as a source of professionally based knowledge.
- Foster the exchange of ideas and information between members and organisations.

