



Notice of Property Factor Enforcement Order

Hohp Ref: HOHP/PF/14/0129

Re: Property at 25 the Village, Archerfield, Dirleton, EH39 5HT ("the Property")

The Parties:-

Mr and Mrs van der Linde, 25 the Village, Archerfield, Dirleton, EH39 5HT ("the Homeowners")

Archerfield House Hotel Management Limited, Archerfield House, Golf Green, Dirleton, EH39 5HU ("the Factors")

Decision by a Committee of the Homeowner Housing Panel in an application under section 17 of the Property Factors (Scotland) Act 2011

Committee Members:

Maurice O'Carroll (Chairman)
Andrew Taylor (Surveyor Member)

This Notice should be read in conjunction with the Decision dated 19 March 2015 under reference HOHP/PF/14/0129

1. By decision of even date with this Notice, the Committee determined that the Factors have breached their duties in terms of s 19(1) of the 2011 Act in that they have failed to comply with sections 1, 3, 6 and 7 of the Code of Conduct for Property Factors as required by s 14(5) of that Act, all as further specified in that decision. It also determined that the Factors have failed to carry out the property factor's duties.
2. In accordance with s 19(3) of the 2011 Act, having been satisfied that the Factors have failed to carry out the property factor duties, the Committee must make a Property Factor Enforcement Order. Before making an Order, to comply with section 19(2) of the Act, the Committee before proposing an Order must give notice of the proposal to the factor and must allow the parties an opportunity to give representations to the Committee.
3. The intimation of this Notice of Property Factor Enforcement Order to the parties should be taken as notice for the purposes of s 19(2)(a) and the parties are hereby given notice that they should ensure that any written representations

which they wish to make under s 19(2)(b) reach the Homeowner Housing Panel's office by no later than 14 days after the date the decision is intimated to them.

4. If no representations are received within that timescale, then the committee will proceed to make a Property Factor Enforcement Order in the following terms without seeking further representations from the parties.
5. Therefore, the Committee proposes to make the following Property Factor Enforcement Order:

Within 28 days of the communication to the Factors of the Property Factor Enforcement Order, the Factors must:

1. Provide a Written Statement of Services to the Homeowners which is compliant with the Code of Conduct in all respects and which incorporates a complaints procedure.
2. Open 3 separate bank accounts in the name of the Factors into which the following sums are separately paid and identifiable, the latter of which to be an interest-bearing account:
 - (i) Management charges payable by homeowners within the development known as the Archerfield Village Development;
 - (ii) The floating funds paid by residents of the said development to the Factors upon purchase of a property in terms of the Deed of Conditions; and
 - (iii) The reserve fund for sums accrued for major items of expenditure such as the roads within the said development.
3. Provide the Homeowners with full and transparent detailed accounts as described by Section 3 of the Code of Conduct and as narrated in the said decision showing all expenditure and receipts further to the Factors' maintenance of the Property at the said Archerfield Estate alone in respect of the years 2012/13, 2013/14 to date and in all years thereafter.
4. Said detailed accounts are to be shown as separate and distinct from any other funds held by the Factors in respect of any other businesses which they operate. Said detailed accounts are to include validation of all cross-charges from whatever source (including, but not limited to the Estate Manager, administrative and invoicing services, insurance provision, security, vehicle costs, Flow Vac charges, repairs and landscaping) with such cross charges as occur to be made explicit, clear and transparent, and supported by time sheets, invoice charges and any other relevant vouching of sums expended.
5. Supply the Homeowner Housing Panel with written justification for the Ranger charges referred to in the said decision, failing which refund of all said charges to the Homeowner arising since 1 October 2012.

6. Supply the Homeowner Panel with written verification as to whether it has any interest in the contractor R D Anderson Haulage Limited, with a copy to the Homeowners.
7. Make payment to each of the Homeowners the sum of £250 in recognition of the inconvenience and distress that the Factors' failures to comply with the terms of the Code of Practice and breaches of the Factor's duties have caused to the Homeowners.
8. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.

6. **Appeals**

The parties' attention is drawn to the terms of s 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides "(1) An appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Panel or a Homeowner Housing Committee; (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the date on which the decision appealed against is made..."

Signed

M O'Carroll
Chairperson

Date 19 March 2015