



FACTORING DEBT RECOVERY PROCESS

August 2021

INTRODUCTION

Thenue Housing Association acts as a property factor to approximately 850 owners, sharing owners and commercial owners. In addition, it has housing and property management responsibility for approximately 3,100 rented units.

Many of the developments that we factor are of mixed tenure. That is to say that they contain a mixture of both owners and our tenants. The tenanted properties are owned by the Association and as such it is in our interest that these properties and their associated common areas, closes, roofs and landscaped areas etc are maintained to a high standard.

In order to properly maintain these developments it will be necessary to carry out individual reactive repairs and to carry out a planned programme of maintenance e.g gutter cleaning. In addition from time to time it may be necessary to carry out essential major repairs. You as an owner have an obligation to pay for a share of these costs as laid out in the title deeds for your property. One of the roles of the Association as your factor will be to invoice you for your share of costs in line with these title deeds.

PREVENTING ARREARS

The Association is keen to ensure that we make it as easy as possible for you as an owner to pay for the factoring services that we provide. We offer a wide range of payment methods as follows:

- **Cheque made payable to the Thenue Housing**

Cheques can be posted to our office 423 London Road or hand delivered through the letterbox of the main office/local service centre. Please include your details on the reverse of all cheques to ensure payments can be correctly allocated.

- **Payment Card at various Pay Point locations**

Contact your Factoring Officer to request a card, which will be posted direct to your chosen address by our payment provider, Allpay. A full list of approved Pay Point sites is also available upon request.

- **Online payments at www.allpayments.net**

These require an Allpay Payment Card and simple registration process. Contact your Factoring Officer to request a card or further assistance.

- **By Debit or Credit card over the phone**

Contact your Factoring Officer or the main switchboard on 0141 550 3581 to be transferred.

- **By Direct Debit**

Your payment arrangement should be agreed with your Factoring Officer, who can set this up over the phone, provided you have details of your bank account number and sort code.

- **By Bank Transfer**

Transfer direct to Thenue Housing, Bank of Scotland, Sort Code 80-83-44, Account Number 10029865. Please ensure you use your six digit customer reference number when making the transfer to ensure this is correctly allocated to your factoring account.

If you are experiencing difficulties in paying for our factoring services you should speak to our Factoring Officer as soon as possible to avoid increasing debt. We can discuss a suitable repayment plan to avoid further debt recovery action, which can incur additional and unnecessary costs.

INVOICING

Factoring charges are invoiced quarterly for the following periods (including anticipated month of invoice issue):

- 1st April to 30th June (August)
- 1st July to 30th September (November)
- 1st October to 31st December (February)
- 1st January to 31st March (May)

Costs will be charged in arrears and the invoice will detail what you have been charged for, along with a mini statement of account showing all transactions for the previous quarter and the current balance. Major repairs and improvement costs may require an upfront contribution from owners prior to the commencement of the works. Quarterly invoices will be issued by post, or by email if this has been specifically requested.

THE FACTORING DEBT RECOVERY PROCESS

The stages in the Association's factoring debt recovery process are as follows:

- 1) **1st Reminder Letter**- If no payment has been made or satisfactory arrangement entered into within 21 days of invoice date, we will send you a 1st Reminder Letter.
- 2) **2nd/Final Reminder Letter**- If no payment has been made or satisfactory arrangement entered into within 14 days from the date of the 1st Reminder Letter, we will send you a Final Reminder Letter. This letter will generate a Late Payment Fee of £10 plus VAT to all accounts with a balance higher than £15. The Late Payment Fee is detailed within the letter and our Written Statement of Services. The charge is applied to the next quarterly factoring invoice issued.
- 3) **Solicitors/7 Day Letter**- If no payment has been made or satisfactory arrangement entered into within 7 days from the date of the Final Reminder Letter, our solicitor will send you a 7 day letter advising that unless payment is received or satisfactory arrangement is entered into within 7 days from the date of the letter, court proceedings will be instigated. We will reserve the right to escalate to this stage of our process where either:

- Your total factoring balance is over £50 **or**
- Your balance is less than £50, but two or more invoices remain unpaid.

COURT ACTION

Following the issue of the 7 Day Solicitors Letter, we will carry out a review of all affected accounts and instruct court proceedings to recover the debt in the following instances:

- The total outstanding balance is more than £500.
- The debtor has failed to engage or make payment for a significant period of more than one year and we consider that legal action is the only remaining option.

COURT PROCESS

Our solicitors act on our behalf in relation to court proceedings, and an overview of the process is set out below:

Upon receipt of instructions, our solicitors will raise a Simple Procedure claim for debts of £5,000 or less in the Sheriff Court local to the tenant/owner. To raise a claim, our solicitors require a copy factoring statement with invoices together with any correspondence issued requesting payment. Once the claim has been successfully registered, a Simple Procedure Timetable will be issued.

The Timetable sets out the two important dates by which certain actions must be taken by Thenue Housing (The Claimant) and the Tenant/Owner (the Respondent). These dates are:

- The last date for service - This is the last date by which the Claim Form must be formally served on the Respondent. Formal service can be effected by Recorded Delivery or preferably by Sheriff Officers. Our solicitors will take instructions from Thenue in respect of their preferred method of service.
- The last date for a response - This is the last date by which the Respondent must respond to the Claim Form served on them.

Once service of the Claim Form has been carried out, Thenue will be required to wait until the last date for a response has passed before taking any further action. Thenue's response will be dependent on the action taken by the Respondent. Typically, the Respondent will take one of the following four courses of action:

1. Admit the claim and settle before the last date for a response

Should the Respondent pay the principal sum sued for before the last date for a response then our solicitors would advise that Thenue Housing attempt to negotiate expenses with the Respondent. Successful negotiations would mean Thenue Housing would receive the sums owed to them sooner and the Respondent would avoid a Decree for expenses being granted against them. If negotiations prove fruitless, Thenue Housing can instruct our solicitor to dismiss the action with expenses following the last date for a response.

2. Admit the claim and ask for Time to Pay

Should the Respondent lodge a Time to Pay Application, Thenue Housing will have two weeks from the date the application is intimated to consent or object to the proposal for time to pay. Should we object, a Time to Pay Hearing will be assigned. Should we accept then an Instalment Decree will likely be issued. An instalment Decree will be required to be intimated on the Respondent. The Respondent will thereafter be required to commence payments within 7 days of intimation. Should the Respondent default on two consecutive payments, then they lose the right to pay in instalments and Thenue Housing can enforce the Decree for the full amount outstanding.

3. Dispute the claim

Should the Respondent dispute the claim then the action will be become defended. The Sheriff will likely assign a case management discussion (CMD) to discuss the case with both parties. Negotiations with a view of settling are always encouraged upon a CMD being assigned.

4. Do nothing and let the last date for a response pass

Should the Respondent fail to take any action before the last date for a response then Thenue Housing may instruct our solicitors to lodge an Application for a Decision requesting the court to grant the orders made in the claim form in full. Once Decree for payment has been received, discussions between Thenue Housing and our solicitors begin regarding enforcement action.

EXPENSES

Any expenses awarded by the courts will be applied to the debtor's factoring account and pursued in full, along with the sum awarded.

ENFORCEMENT ACTION

A Decree cannot be enforced until 28 days after the decree was sent. Once this 28-day period has passed, Thenue may instruct a Charge for Payment to be served on the Respondent. A Charge for Payment is a formal demand for the outstanding sums due. It will give the Respondent a final 14-day period to make payment. Should the 14 days pass without payment being made then Thenue may take further enforcement action. Thenue may hold information or instruct a trace to obtain information to attempt to obtain funds through the following methods:

- **Rent Arrestment**

If a property is privately rented, an arrestment order can be served in order that any rent received by the owner or letting agent is paid direct to Thenue until the debt is cleared.

- **Wage Arrestment**

If the arrestment order is successful, the debtor's employer must pay a proportion of their wages direct to Thenue until the debt is cleared.

- **Bank Arrestment**
Thenue may instruct a global bank arrestment to secure a payment direct from the debtor's bank account.
- **Inhibition Notice**
Such a notice since served on the owner rather than the specific property and prevents the owner from selling any property they own until the factoring arrears are settled in full. This action is only likely to be effective if an individual owner or company owns several properties.
- **Sequestration**
Thenue may apply to the court to sequestrate a debtor who owes more than £3,000 (increased to £10,000 during the COVID-19 pandemic). Sequestration is the term used in Scottish Law for entering bankruptcy and places the debtor's assets in the hands of a trustee to administer for the benefit of creditors.

It should be noted that the award of any decree and any subsequent enforcement action will negatively impact your credit score, making it harder to get loans, mortgages, credit cards or even mobile phone contracts. We must stress how important it is to make early contact with Thenue to discuss any debt and avoid legal action.

NOTICE OF POTENTIAL LIABILITY FOR COSTS (NOPL)

For any factoring debts of more than £250, we reserve the right to instruct our solicitors to register a Notice of Potential Liability for Costs against the Title of the property. This flags the debt during any Title checks, for example in the event you wish to re-mortgage or sell your property. The debt must be paid in full to allow us to sign a Discharge to remove the Notice, failing which the debt transfers automatically to the purchaser.

The costs involved in registering the NOPL will be applied in full to the debtor following receipt of the relevant invoice. Owners will be notified in advance of any such charges appearing on their quarterly factoring invoice. The NOPL is in place for a period of 3 years, however if the debt remains outstanding after this period, a new Notice will be registered, incurring an additional cost to the debtor.

CONFIDENTIALITY

Staff should not discuss the owner's arrears with a third party (this includes household or family members) without the prior written permission of the owner.

Owners in arrears calling at an office will be interviewed in private interview facilities. Staff will not discuss their details in public at reception.