

SAL Factsheet: Property Factors (Scotland) Act 2011

The Property Factors (Scotland) Act 2011 was introduced to protect homeowners by providing minimum standards for property factors, and a method for dealing with disputes between homeowners and their factor.

The Act requires all factors to register and comply with their duties and a statutory Code of Conduct. It is an offence to operate as a factor without being registered. The register can be found at <http://sedsh119.sedsh.gov.uk/propertyfactorregister/>. The Code of Conduct can be found at <http://www.scotland.gov.uk/Resource/0039/00397542.pdf>.

I am not happy with the service provided by my factor. How should I proceed?

Applications by homeowners who consider that their factor has failed in their duties or breached the code are determined by the First-tier Tribunal for Scotland (Housing and Property Chamber) www.housingandpropertychamber.scot.

Applications should be made in writing using the application form found on the [Chamber website here](#). The application form should be accompanied by: -

1. evidence that the homeowner has notified the property factor of the complaint and that the property factor has refused to resolve the complaint or has unreasonably delayed resolving the complaint;
2. copies of any correspondence which the homeowner has sent and received from the property factor regarding the complaint, including the factor's response to notification of the complaint; and
3. a copy of any Statement of Services provided by the property factor (it is a requirement of the Code of Conduct that a property factor must provide each homeowner with a written Statement of Services).

If the application is valid the case will proceed to a hearing where it will be decided on by a committee. Both parties are invited to attend the hearing and the committee will make their decision based on written and oral submissions by both parties.

What sanctions can be applied?

If the committee decides that the property factor has failed to carry out their duties and/or to comply with the property factor code of conduct, then the committee must make a Property Factor Enforcement Order (PFEO) requiring the property factor to take such action as the committee considers necessary, and where appropriate, make such payment to the homeowner as the committee considers reasonable. The PFEO must state the period within which any action must be taken or any payment required must be made. It is a criminal offence not to comply with a PFEO without reasonable excuse.

I am a landlord or a letting agent arranging a communal repair. Do I need to register?

If you fall within the definition of a “property factor” contained within the Act then you need to register. The definition can be found here: - www.legislation.gov.uk/asp/2011/8/section/2.

Whether a person or organisation is covered by this definition depends upon the relationship they hold in regard the management or maintenance of the common parts of land. The definition covers all sectors of the industry (private and social) and includes those who, ‘in the course of their business’, manage the common parts of land (including buildings).

The legislation applies principally to those engaged in factoring with the intention of making a profit and whether a fee is charged will therefore be relevant. However the Act’s definition of property factor is broad in the sense that it does not relate only to situations where a fee is charged or where there exists a burden in the title deeds or a contract for property management services.

Some considerations in reaching a conclusion might include:

- Whether there is a profit motive or contributions are just to cover costs;
- Whether the person or organisation receives a fee from homeowners for a managerial service provided;
- The frequency of the works - is it a regular service or is it simply provided on an ad hoc basis when necessary;
- Whether the service is conducted on sound and recognised business principles, within commercial structure and employing staff;
- Whether there is some form of contract in place.

Ultimately interpretation of the Property Factors (Scotland) Act 2011, is for the courts, and it will depend on the individual circumstances of each arrangement. It may be in some cases the landlord or letting agent is not acting a property factor, but if they are then they should be registered.

**SAL members receive free advice from the SAL helpline
via 0131 564 0100 or by email advice@scottishlandlords.com**

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