

## Introduction and Overview

The purpose of this document is to provide staff with clear and consistent procedures to be used when dealing with abandoned houses. This issue can present several practical problems for the Association such as lost rental income, continuing maintenance costs and an increased risk of vandalism.

## Aims and Objectives

The use of these procedures should help reduce the number of abandoned houses and therefore minimise rent loss and other costs.

## Abandonment Procedures

The document outlines the Association's procedures in relation to the following sections:

1. Scottish Secure Tenancy Agreement (SST);
2. Dealing with Abandoned Houses;
3. Investigations;
4. Serving a Notice of Abandonment;
5. Terminating the Tenancy and Possession of the House;
6. Abandoned Property Found at the House;
7. Register of Abandoned Property;
8. Tenant's Recourse to Court;
9. Abandonment of a House by a Joint Tenant;
10. Response Received when Serving an Abandonment Notice;
11. Recording of Abandonment Information.

### 1. Scottish Secure Tenancy Agreement (SST)

The Association's SST sets out the following conditions:

- 2.2: *"You must tell us if you intend to go away, for more than four weeks and your house will be unoccupied during that time."*
- 6.4: *"We have reasonable grounds for believing that you have abandoned the house. In this case, we may forcibly enter the house to make it secure. We will also give you at least 4 weeks' notice that we believe that you have abandoned the house. If, at the end of that period, we have reasonable grounds for believing that you have abandoned the house, we may repossess it by service of another notice. You have a right to make an application to the sheriff against repossession within six months. We will secure the safe custody and delivery to you of any property which is found in the house. We will have the right to make a charge for this and to dispose of any property if you have not made arrangements for its delivery within a given period."*

### 2. Dealing with Abandoned Tenancies

Under Sections 17 and 18 of the Housing (Scotland) Act 2001 (the Act), the Association may terminate a Scottish Secure Tenancy or Short Scottish Secure Tenancy if it has reasonable grounds for believing that:

- The house is not occupied; and
- The tenant does not intend to occupy the house as the tenant's home.

Section 17 of the Act gives the Association powers to deal with houses it believes are abandoned including:

## 2. Dealing with Abandoned Tenancies (Continued)

- Entering the house at any time in order to secure the house, fittings, fixtures or furniture against vandalism. This allows the Association to open, if necessary by force, doors and lock fast places; and
- To take possession of the house in accordance with Section 18 of the Act.

## 3. Investigations

Where staff suspect that a house is abandoned, they should carry out investigations to determine whether or not the tenant is occupying the house. Staff must record details of any investigations and other relevant information on the Abandonment Synopsis (Form 1).

Examples of investigations include:

- Letter to tenant offering an appointment;
- Calling cards left at the tenant's property;
- Contacting neighbours;
- Telephone calls to the tenant;
- Check rent account to determine whether payments are being received;
- Check maintenance systems to determine any recent contact;
- Check with known family members / next of kin;
- Check with Housing Benefit office;
- Inspect the house from the outside to see what it reveals;
- Check through the letterbox for smells, signs of unopened mail or lack of furnishings;
- Check whether the tenant is in hospital;
- Check whether the tenant is in prison;
- Check with Social Work Services.

## 4. Serving a Notice of Abandonment

Where, following the completion of investigations, staff believe that the house has been abandoned then the First Notice for Abandoned House (Notice 1) should be served on the tenant at the address of the property. This notice must state the following:

- That the Association believes the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home.
- The tenant is required to write to the Association within twenty-eight days of the notice being served advising that the tenant intends to occupy the house as their home.
- That, if at the end of the twenty-eight days it appears that the tenant does not intend to occupy the house, the tenancy will be terminated immediately.
- That in accordance with The Scottish Secure Tenancies (Abandoned Property) Order 2002, the tenant must collect any belongings from the house within 28 days of the date of the notice.
- That any belongings not collected from the property within 28 days will be disposed of unless its value exceeds the cost of storage plus any arrears.
- That any belongings with a value that exceeds the cost of storage plus any rent arrears and is not collected from the property within 28 days of date of the notice, will be stored for six months from the date of repossession of the house.
- That the Association will dispose of belongings where the tenant fails to collect their belongings and pay the Association for its storage and delivery.

#### 4. Serving a Notice of Abandonment (Continued)

Notice 1 must be hand delivered at the tenant's address, and a second staff member must be present to witness the serving of the notice. The serving officer must give six loud audible knocks before posting Notice 1 through the tenant's letterbox. Once Notice 1 has been served, both the serving officer and witness must sign a Service of First Abandonment Notice Statement (Statement 1) confirming when and how Notice 1 was served and who was present at the service. Statement 1 should be attached to a copy of Notice 1 and both documents placed in the tenant's house file. Details of the service of Notice 1 must also be recorded in the Abandonment Synopsis. Where it is believed that the tenant is occupying another address, two staff members must also serve Notice 1 at this address by sending this by recorded delivery. A Statement 1 must also be attached to any notice served by recorded delivery and all details recorded in the Abandonment Synopsis.

Following the service of Notice 1, staff should continue to make sufficient enquiries, as per Section 3 of this procedure, to be satisfied that the house is unoccupied and that the tenant does not intend to occupy it as their home. If, after fourteen days of serving Notice 1, the tenant has failed to respond then staff should serve an Abandonment Notice Reminder (Notice 2) advising the tenant of the consequences if they fail to respond. Where it is believed that the tenant is occupying another address, staff must also serve Notice 2 at this address by sending this by recorded delivery. Details of the service of Notice 2 must also be recorded in the Abandonment Synopsis.

#### 5. Terminating the Tenancy and Possession of the House

If the tenant fails to respond to Notice 1 and investigations confirm that the house is unoccupied and that the tenant does not intend to occupy the house as their home, a Second Notice for Abandoned House (Notice 3) should be served after the twenty-eight day period. Notice 3 will bring the tenancy to an end with immediate effect. After the service of Notice 3, the Association can take possession of the house without any court proceedings.

Notice 3 must be hand delivered at the tenant's address, and a second staff member must be present to witness the serving of the notice. The serving officer must give six loud audible knocks before posting Notice 3 through the tenant's letterbox. Once Notice 3 has been served, both the serving officer and witness must sign a Service of Second Abandonment Notice Statement (Statement 2) confirming when and how Notice 3 was served and who was present at the service. Statement 2 should be attached to a copy of Notice 3 and both documents placed in the tenant's house file. Details of the service of Notice 3 must also be recorded in the Abandonment Synopsis. Where it is believed that the tenant is occupying another address, two staff members must also serve Notice 3 at this address by sending this by recorded delivery. Statement 2 must also be attached to any notice served by recorded delivery and all details recorded in the Abandonment Synopsis.

When serving Notice 3, a further notice confirming the date and time that the Association will gain possession of the house (Notice 4) must be enclosed. A copy of Notice 4 must be placed in the tenant's house file.

If the tenant responds between the service of Notice 3 and the date of possession, staff should determine the tenant's intention. Once the intentions of the tenant have been established, the following should be undertaken:

- Where the tenant advises that they are occupying the house and will continue to do so, the action should be cancelled and the tenancy continued.
- Where the tenant advises that they are no longer occupying the property then a termination notice should be signed and the Void Management Procedures implemented.

If the tenant fails to respond to Notice 3, Housing Management Staff and Maintenance Services Staff should arrange for a contractor to force entry to the house at the specified date and time. Where it is deemed appropriate, Housing Management should arrange for Police Scotland to be present at the point of entry. Locks must be changed and the cost of this recharged to the tenant. If required, Maintenance Services should arrange for any additional security.

5. Terminating the Tenancy and Possession of the House (Continued)

Staff who force entry to the house must take an inventory (Form 2) of each room and take digital photographs of any property found in the house or damage done to the house. Form 2 must be signed by two members of staff. Once the house has been secured the Void Management Procedures will be implemented.

6. Abandoned Property Found at the House

If at the end of the date of repossession specified in Notice 4, the tenant has not collected the property, the Association may have a duty to continue to store the property for 6 months from the date of possession. If the cost of storing the property along with any rent arrears is greater than the value of the property then there is no obligation for the Association to store the property for any period beyond the date specified in Notice 4. Where there is no obligation for the Association to store the belongings beyond the specified date in Notice 4, or in cases where the association has an obligation to store the belongings and the tenant fails to collect the belongings within the six month period, the Association should either sell or dispose of the property.

7. Register of Abandoned Property

The Association must keep a register of houses that have been repossessed under Section 18 of the Act, in which property has been found. In practice, almost all abandoned houses are likely to have some items left, therefore staff should list all abandoned houses in the Register of Abandoned Property. The house must remain on the Register of Abandoned Property for five years and this register must be open for public inspection at all reasonable times.

8. Tenant's Recourse to Court

The tenant can challenge the Association's decision to terminate the tenancy by raising legal action within six months after the date of termination of tenancy if the tenant believes:

- The Association has not complied with Section 18 of the Act; or
- The Association did not have reasonable grounds for finding that the house was unoccupied or that the tenant did not intend to occupy it as their home; or
- The Association was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the Association of their intention to occupy the house.

The Association must keep a complete record of investigations and actions taken in relation to an abandoned house, as this will provide essential evidence in the event of a legal challenge by a tenant.

If the Association has incomplete or insufficient records then it will be more difficult to defend a legal action raised by the tenant. If the Association was unsuccessful in defending a legal action then the Association would have to either re-let the property to the tenant or provide alternative comparable accommodation to the tenant.

9. Abandonment of a House by a Joint Tenant

Where staff has reasonable grounds for believing that one of the joint tenants is not occupying the house and does not intend to occupy it as his or her home, then enquiries, in accordance with Section 3 of this procedure, should be carried out to establish whether or not the joint tenant is occupying the house.

9. Abandonment of a House by a Joint Tenant (Continued)

Where, following investigation, staff remain satisfied that a joint tenant is not occupying the house then a Joint Tenant First Notice of Abandoned House (Notice 5) should be served on that tenant stating:

- The Association has reason to believe that the joint tenant is not occupying the house and does not intend occupying the house as his or her home;
- The joint tenant must inform the Association in writing within twenty-eight days of the notice if he / she intends to occupy the house as his or her home; and
- If it appears that at the end of the twenty-eight days the joint tenant does not intend to occupy the house as his or her home, the joint tenant's interest in the house will be brought an end by the service of a further notice.

Notice 5 must be hand delivered at the tenant's address, and a second staff member must be present to witness the serving of the notice. The serving officer must give six loud audible knocks before posting Notice 5 through the tenant's letterbox. Once Notice 5 has been served, both the serving officer and witness must sign a Service of Joint Tenant First Abandonment Notice Statement (Statement 3) confirming when and how Notice 5 was served and who was present at the service. Statement 3 should be attached to a copy of Notice 5 and both documents placed in the tenant's house file. Details of the service of Notice 5 must also be recorded in the Abandonment Synopsis. Where it is believed that the tenant is occupying another address, two staff members must also serve Notice 5 at this address by sending this by recorded delivery. Statement 3 must also be attached to any notice served by recorded delivery and all details recorded in the Abandonment Synopsis.

Staff must also serve a copy of Notice 5 on the other joint tenant. A copy of Notice 5 should be accompanied by a covering letter (Notice 6) addressed to the other joint tenant and hand delivered by two members of staff to the tenancy address. The serving officer must give six loud audible knocks before posting the copy of Notice 5 through the tenant's letterbox. Once the copy of Notice 5 has been served, both the serving officer and witness must sign a Service of Copy of Joint Tenant First Abandonment Notice Statement (Statement 4) confirming when and how the copy of Notice 5 was served and who was present at the service. Statement 4 should be attached to a copy of Notices 5 and 6 and both documents placed in the tenant's house file. Details of the service of the copy of Notice 5 must also be recorded in the Abandonment Synopsis.

If the joint tenant fails to respond to Notice 5 within the twenty-eight day notice period and investigations confirm that the joint tenant does not occupy the house and does not intend to occupy it as his or her home, staff should serve a Joint Tenant Second Notice of Abandoned House (Notice 7) on that joint tenant terminating their interest in the tenancy on a date not less than eight weeks from the date of Notice 7. Staff should specify the date of termination as eight weeks and one day from the date of Notice 7.

Notice 7 must be hand delivered at the tenant's address, and a second staff member must be present to witness the serving of the notice. The serving officer must give six loud audible knocks before posting Notice 7 through the tenant's letterbox. Once Notice 7 has been served, both the serving officer and witness must sign a Service of Joint Tenant Second Abandonment Notice Statement (Statement 5) confirming when and how Notice 7 was served and who was present at the service. Statement 5 should be attached to a copy of Notice 7 and both documents placed in the tenant's house file. Details of the service of Notice 7 must also be recorded in the Abandonment Synopsis. Where it is believed that the tenant is occupying another address, two staff members must also serve Notice 7 at this address by sending this by recorded delivery. A Statement 5 must also be attached to any notice served by recorded delivery and all details recorded in the Abandonment Synopsis.

Staff must also serve a copy of Notice 7 on the other joint tenant. A copy of Notice 7 should be accompanied by a covering letter (Notice 8) addressed to the other joint tenant and hand delivered by two members of staff to the tenancy address. The serving officer must give six loud audible knocks before posting the copy of Notice 7 through the tenant's letterbox. Once the copy of Notice 7 has been served, both the serving officer and witness must sign a Service of Copy of Joint Tenant Second Abandonment Notice Statement (Statement 6) confirming when and how the copy of Notice 7 was served and who was present at the service. Statement 6 should be attached to a copy of Notices 7 and 8 and both documents placed in the tenant's house file. Details of the service of the copy of Notice 7 must also be recorded in the Abandonment Synopsis.

9. Abandonment of a House by a Joint Tenant (Continued)

On the date specified in Notice 7 expires the remaining tenant simply continues as the sole tenant. The tenancy does not end but staff must ensure that the tenancy details are updated to reflect fact that the abandoning joint tenants interest in the tenancy has been brought to an end. Any debts remain on the account and are recoverable from the remaining tenant.

A joint tenant who is aggrieved by the completion of abandonment procedures bringing their interest in the tenancy to an end has the right to appeal to the Sheriff within eight weeks of the date of service of Notice 7.

10. Response Received when Serving an Abandonment Notice

Where staff are in the process of serving a first or second abandonment notice on either a sole tenant or joint tenant, and the tenant responds to the six audible knocks, the notice must be served by the handing the notice to the tenant. Both the serving officer and witness will complete the relevant service statement confirming how they have served the notice. When serving the notice, staff should determine the tenant's intention with regards to the property and arrange a follow up office interview to be held within twenty-four hours. During this office interview, the tenant will be required to either:

- Confirm in writing their intention to occupy the house resulting the abandonment process being cancelled; or
- Sign a termination notice if it is not their intention to occupy the property. Where a termination notice is signed the Void Management Procedures will be implemented.

Where staff are in the process of serving a first or second abandonment notice on either a sole tenant or joint tenant, and an occupier of the property responds to the six audible knocks, the notice must be served by the handing the notice to that occupier. Both the serving officer and witness will complete the relevant service statement confirming how they have served the notice. When serving the notice staff should make general enquiries with the occupier about the tenant's whereabouts and request that the tenant contacts the Association's office within forty-eight hours. Where the tenant contacts the Association they will be required to either:

- Confirm in writing their intention to occupy the house resulting in the abandonment process being cancelled; or
- Sign a termination notice if it is not their intention to occupy the property. Where a termination notice is signed the Void Management Procedures or Joint Tenancy Procedures will be implemented.

Where the tenant fails to contact the Association within seven days, further enquiries will be made, in accordance with Section 3 of this procedure, and the decision to continue with the abandonment process will depend on the outcome of such investigations and relevant legal advice taken.

11. Recording of Abandonment Information

Staff must retain a copy of all notices served, service statements, the abandonment synopsis and abandonment inventory on the tenants house file.

When commencing abandonment procedures for either a sole tenancy or joint tenancy, a folder (titled the tenants name and address) must be set up in the abandonment directory under Casework. Copies of all notices, service statements and forms should also be saved in the tenants computer file.

**Template Forms and Notices**

Form 1	Abandonment Synopsis
Form 2	Abandonment Inventory
Notice 1	First Notice for Abandoned House
Notice 2	Abandonment Notice Reminder
Notice 3	Second Notice for Abandoned House
Notice 4	Confirmation of Date of Possession
Notice 5	Joint Tenant First Notice of Abandoned House
Notice 6	Copy of Joint Tenant First Abandonment Notice to Sitting Tenant Covering Letter
Notice 7	Joint Tenant Second Notice of Abandoned House
Notice 8	Copy of Joint Tenant Second Abandonment Notice to Sitting Tenant Covering Letter
Statement 1	Service of First abandonment Notice
Statement 2	Service of Second abandonment Notice
Statement 3	Service of First Joint Tenant Abandonment Notice
Statement 4	Service of Copy of First Joint Tenant Abandonment Notice to Sitting Tenant
Statement 5	Service of Second Joint Tenant Abandonment Notice
Statement 6	Service of Copy of Second Joint Tenant Abandonment Notice to Sitting Tenant