



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 2

#### DISPUTE RESOLUTION

##### *Application and referral*

#### **17 Application to homeowner housing panel**

- (1) A homeowner may apply to the homeowner housing panel for determination of whether a property factor has failed—
  - (a) to carry out the property factor’s duties,
  - (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).
- (2) An application under subsection (1) must set out the homeowner’s reasons for considering that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty.
- (3) No such application may be made unless—
  - (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor’s duties or, as the case may be, to comply with the section 14 duty, and
  - (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner’s concern.
- (4) References in this Act to a failure to carry out a property factor’s duties include references to a failure to carry them out to a reasonable standard.
- (5) In this Act, “property factor’s duties” means, in relation to a homeowner—
  - (a) duties in relation to the management of the common parts of land owned by the homeowner, or
  - (b) duties in relation to the management or maintenance of land—
    - (i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.

## **18 Referral to homeowner housing committee**

- (1) The president of the homeowner housing panel must decide whether to—
  - (a) refer an application under section 17(1) to a homeowner housing committee, or
  - (b) reject the application.
- (2) The president may reject an application only if the president considers—
  - (a) that it is vexatious or frivolous,
  - (b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute,
  - (c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications, or
  - (d) that the dispute to which the application relates has been resolved.
- (3) The president must make a decision under subsection (1)—
  - (a) within 14 days of the panel’s receipt of the application concerned, or
  - (b) where the president considers—
    - (i) that the decision cannot be made without further information, or
    - (ii) that there is a reasonable prospect of the dispute being resolved by the parties,by such later date as the president considers reasonable.
- (4) The president must, as soon as practicable after rejecting an application, give notice of the rejection—
  - (a) to the homeowner, and
  - (b) where the president is aware of the name and address of a person who acts for the homeowner in relation to the application, to that person.
- (5) Such a notice must—
  - (a) set out the reasons for the rejection, and
  - (b) explain the procedure for appealing against it.