

## HOME OWNERSHIP ARREARS POLICY

### Responsible Officer

Director of Customer Services

### Aim of the Policy

This policy aims to set out our approach to Home Owners in arrears. Phoenix aims to ensure that home owners pay their rent, service charge and other charges in accordance with the terms of their lease. Where a home owner falls into arrears Phoenix will take an early intervention approach to contacting home owners and will act in accordance with good practice on arrears recovery. This policy applies to leaseholders, shared owners and freeholders with a service charge liability to Phoenix.

### The Policy

All home owners are expected to pay their rent, service charge and other charges in accordance with their lease. The Income Team will monitor home owners' accounts regularly. Any home owner who falls behind with payments will be contacted promptly by Phoenix staff and appropriate action for arrears recovery will be taken. Home Owners will be offered advice about their housing and other benefits, to assist them to maximise their income and meet their service charge liabilities.

Phoenix staff can arrange a repayment plan. If the home owner does not make the payments as agreed then Phoenix will review the available options. These options include contacting the mortgage lender where it has still not been possible to reach an agreement acceptable to both the home owner and Phoenix, and charging an administration fee.

Where Phoenix is satisfied that appropriate courses of recovery action have been taken by staff and service charges or, where applicable, rent remains unpaid, legal proceedings will be considered. Legal action may include money judgement orders, or, following persistent failure to pay service charges, action for forfeiture taking account of the requirements of the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

Where a home owner has declared financial hardship which affects their ability to pay due charges or repay a debt, we will set an affordable repayment plan or take this into consideration before any legal and/or enforcement action is taken.

If Phoenix hasn't been able to agree a repayment plan with a home owner who has a mortgage, we will approach their mortgage lender to recover the sums owed. If the mortgage lender agrees they will repay the debt outstanding, the amount repaid is usually added to the homeowner's mortgage.

### Legal action to collect arrears

In the event we cannot recover the debt from the home owner or their mortgage lender we will commence legal action. Any legal action that may result in Phoenix recovering possession of a home owner's home will be reviewed by Head of Specialist Housing Services and authorised by the Executive Team.

### **Leasehold arrears recovery**

If a leaseholder has arrears of more than £100, or if the arrears have been outstanding for more than 3 years, we will begin action to recover the debt via a money judgment order and a County Court claim will be issued against the leaseholder. If judgement is received, it can be enforced by:

- Requesting payment from the leaseholder's lender.
- S146 Forfeiture – where we recover possession of a leaseholder's home.
- Order for Sale – where, after being awarded a charging order, we obtain a court order for the home owner to sell their home.

In exceptional circumstances we may consider enforcing the order by:

- Charging Order – where we secure the debt against the home owner's home, allowing us to recover the money when the property is sold.
- Voluntary Charge – where a home owner agrees to secure money they owe against their home.

This list is not exhaustive and we will decide which action to take on an individual case by case basis taking leaseholder's circumstances into consideration. All legal costs incurred during arrears recovery action will be recharged to the leaseholder.

Possession proceedings, through either S146 Forfeiture action or an Order for Sale, will only be carried out after careful consideration of the individual case, and with authorisation of the Executive Team.

### **Shared Owners arrears recovery**

If a shared owner falls into arrears, and the lender refuses to clear the debt, a 28-day notice will be given to the shared owner and its lender that we intend to serve a Section 8 Notice of Seeking Possession. If no payment is received, and there are more than one month's rent arrears, a Section 8 Notice will be served. A Court date will be allocated for a possession hearing and an outright possession order will be sought for the property.

We will notify shared owners in advance of any legal action that we intend to take. All legal costs incurred during arrears recovery action will be recharged to the shared owner.

Phoenix will consider requests and/or give advice about available staircasing down options if this approach assists with the sustainment of shared ownership properties: such as to resolve rent arrears and prevent homelessness. Phoenix will respond on a case by case basis.

PCH will not consider this as an option for the purposes of releasing equity for improvements, alterations or for addressing major works service charges.

### **Freeholder arrears recovery**

The law surrounding freehold service charges is complex and our approach to freehold arrears cases will be determined by the terms of the sale and on a case by case basis.

We will notify freeholders in advance of any legal action that we intend to take. All legal costs incurred during arrears recovery action will be recharged to the freeholder.

## **Payment difficulties**

Phoenix will take an empathetic approach to residential home owners in genuine financial difficulties and can provide access to debt counselling. If lessees are unable to pay the service charges through instalments, Phoenix will explore alternative payment options available to the lessee and provide advice to maximise their income and prioritise 'priority' and 'non-priority' debts and may include referrals to specialist debt advice agencies.

Phoenix will assess each case individually and depending on the circumstances may consider extending the repayment period, or placing a charge on the property so that the debt is repaid when the property is sold (subject to Board approval) with interest payable annually.

Extended repayment agreements may not be offered to home owners who do not reside in the property. This is because they are considered to be a commercial property owner and do not qualify for assistance from a charitable status organisation.

## **Monitoring and review**

This policy will be monitored by Key Performance Indicators and will be reviewed every three years or sooner wherever there are changes to legislation or good practice.

## **Legislation**

- Landlord and Tenant Act 1985
- Housing Act 1985
- Commonhold and Leasehold Reform Act 2002
- CIH Shared Ownership Charter

## **Associated documents, policies and procedures**

Including:

- Home Ownership Management Policy
- Shared Ownership Eligibility and Affordability Policy
- Shared Ownership Rent and Service Charge Setting Policy
- Leasehold handbook
- Shared Ownership handbook
- Service charges and major works service charges: ways to pay

## **Definitions**

Term/acronym	Description
Home Owner	Includes leaseholders, shared owners and freeholders.
Phoenix	Phoenix Community Housing.

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