



FACTORING AGREEMENT

ARGYLL COMMUNITY HOUSING ASSOCIATION LIMITED

This is a Factoring Agreement

between

Argyll Community Housing Association Limited, having our registered office at 63-65 Chalmers Street, Ardrishaig, Argyll, PA30 8DX (“ACHA”)

and

..... (“the owner”) of

..... (“the property”)

This Factoring Agreement sets out the Factoring Policy operated by ACHA and approved by its Board of Management.

DEFINITIONS:-

- ACHA: Argyll Community Housing Association, registered office 63-65 Chalmers Street, Ardrishaig, PA30 8DX, and its successors.
- The owner: The person or people who hold a legal title to property whether individually or jointly.
- The property: A flat, unit, house or building owned by the owner.
- Factoring Agreement: A legally binding agreement setting out details of the factoring service and obligations of the owner and ACHA.
- Factoring Policy: A policy created by ACHA to set out the regulation of the factoring service.
- Board of Management: Members of the Association who are elected onto the Management Board to regulate, approve and make decisions on behalf of the ACHA.
- Factoring Service: A property management service to carry out regular and routine property maintenance and repair to common property and common ground.

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Common Repairs:	Repairs carried out to part of properties which are shared with other owners (eg roof, pathways, close).
Flat/Unit:	Individual flat, house or building which may form part of a larger building or row of properties.
Block:	A block of properties – e.g. row of terraced houses; block of flats; four in a block – which contains one or more flats/units.
Common parts/areas:	An area within a block which is owned by more than one person e.g. close.
Common ground:	An area of ground which is owned by more than one person.
Cyclical maintenance:	Regular maintenance of the fabric of the building eg clearing guttering, close painting etc.
Title deeds:	The Feu Disposition, Disposition, Conveyance, Deed of Conditions or Land Certificate which transfers the ownership of the property and contains burdens and conditions which affect the property.
Contractors:	Companies, individuals, or in-house repairs teams who are approved to carry out work on behalf of the Association.
Factors Float:	Money paid to ACHA at the outset of factoring to cover ongoing repairs without having to invoice owners each time minor works are carried out.
Emergencies:	Circumstances or situations which are considered dangerous or seriously detrimental to the safety of property or people who may come into contact with the property.
Improvement works:	Upgrading work to improve property prior to it becoming essential or an emergency.
Arrears:	Money owed to ACHA in payment of invoices and work instructed on behalf of owners.

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1. FACTORING SERVICE

The factoring service is provided to assist owners in managing repairs and maintenance to common parts of their property, gain agreement from neighbouring owners, and have work carried out to maintain common parts of their building and common ground.

1.1 In operating the service ACHA will:-

- (a) Notify owners of common repairs expected to exceed £100 per flat/unit.
- (b) Instruct minor common repairs up to the estimated value of £200 per flat/unit without approval from the owner.
- (c) Plan for, arrange and oversee a programme of cyclical planned maintenance of the common parts pertaining to the property.
- (d) Instruct emergency common repair works as and when required.
- (e) Instruct grass cutting, weed killing, maintenance and repair of common ground including pathways, play areas, open ground, shared private septic tanks, shared private water supplies and all other common parts.
- (f) Provide other such services as requested by owners and accepted by ACHA in writing (e.g. close and stair cleaning).

1.2 ACHA will undertake the following work on behalf of owners:-

- (a) Obtain estimates for work expected to exceed £5,000 per block.
- (b) Plan for, arrange and oversee major common repairs and improvement works when approval has been obtained from the majority of owners.

1.3 Monitoring of the factoring service will be carried out:-

- (a) To ensure that owners abide by the terms of the title deeds in their use of the property and to take action on instruction by the majority of owners where there has been a breach of this.
- (b) To help owners to insure the property at full rebuilding value where requested by owners and on the availability of suitable policies.
- (c) To apportion costs for common repairs (including major repairs and improvement works) and render accounts on a quarterly basis

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covering periods April to June, July to September, October to December and January to March or at other such intervals as may be agreed between ACHA and the owners; and to recover outstanding debts.

2. QUALITY OF SERVICE

ACHA is committed to providing an efficient and effective maintenance service. This service will reflect the requirements of the property and the need of the owners.

In order to provide a high quality of service, the following is undertaken:-

2.1 Contractors Selection

ACHA maintains an approved list of contractors capable of carrying out the works for which they are engaged. This can be provided by the Association on request.

Contractors performance is regularly monitored by ACHA's Maintenance staff to ensure that service and quality of work is of a high standard and represents value for money. Their appointment is reviewed regularly by the Board of Management to ensure that costs are kept competitive but consistent with a high quality of service and workmanship.

2.2 Maintenance Planning Property Inspection

The owner may instruct ACHA to carry out a property inspection to determine what repair works may be required now or in the future to the property. Once the inspection has been carried out ACHA will make recommendations to owners and, if necessary, a planned maintenance programme can be agreed.

Should owners decide to instruct a maintenance planning property inspection this can be arranged on the instruction of the majority of owners. A property inspection report will be sent to owners with the findings of the inspection along with recommendations and proposals.

With routine reactive repairs pre-inspections are carried out as and when necessary in order to accurately determine the work necessary. Post inspection of works will be carried out from time to time to assess the standard of work.

2.3 Maintenance

ACHA operates a maintenance programme in line with recommendations published by the Scottish Federation of Housing Associations.

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The cycle set for redecoration, servicing, renewal of components, etc are all as recommended as best practice by the relevant professional and Government bodies and are reviewed in the light of the results of regular inspections.

2.4 Estimates

ACHA will request three separate estimates for works anticipated to exceed the cost of £5,000 per block for consultation with owners.

3. COSTS

3.1 Fees and Charges

The costs and charges are detailed in Appendix I. Fees and charges will be reviewed annually.

Accounts rendered at three monthly or other intervals as agreed, will comprise the following costs:-

1. ACHA's annual management fee
2. Common repairs and maintenance.
3. Cyclical maintenance.
4. Service charges eg Lighting, Ground Maintenance (if applicable)
5. Administration charge
6. Buildings Insurance premium (if applicable)
7. Maintenance planning property inspection fee (if instructed by owners)
8. Any agreed outlays incurred by ACHA on owners behalf

Accounts rendered will state repairs carried out during the period.

Accounts from private contractors will be available to owners for inspection at their request within a period of fourteen days following the issue of accounts.

Accounts will fall due for payment within fourteen days of issue. Failure to pay sums due within the said fourteen day period will result in payment being pursued through the Association's arrears recovery procedure which may include raising action through the small claims court, summary cause or normal court proceedings. Owners will be liable for all costs incurred in pursuing payment, fees and all other amounts incurred (including legal, court, Sheriff Officers and administration expenses) to cover the cost of recovering the debt as specified in Clause 6.4.

3.2 Apportionment of Repairs Costs

Repairs costs will be apportioned according to each owner's share of responsibility as detailed in the title deeds. In the event of the title deeds being

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inconsistent or unclear shares of responsibility shall be determined by the Tenements (Scotland) Act 2004 or the Housing (Scotland) Act 2006.

The plan attached in Appendix II shows the solum of the building and common ground relating thereto.

SHARES DUE BY THE OWNERS:- [\[insert shares of responsibility and delete or add where applicable\]](#)

Roof:
Common close and stairs:
Walls and gables:
Gutters and downpipes:
Common ground and pathways:
Common electricity:
Private parking areas:
Private roads:
Private water supply:
Private septic tank:

3.3 Factors Float

A £100 Factors Float will be paid to ACHA and held to cover repairs and maintenance. The amount of the float will be reviewed annually depending on costs of repairs carried out in the previous year and may be increased as necessary. Quarterly account statements shall act as a request for owners to fund the float back to £100. Any balance due to the owner from the float will be repaid on sale after deduction of any outstanding sums due or works instructed but not yet paid for.

3.4 Insurance

At the request of owners ACHA will attempt to put owners in touch with suitable insurance companies for them to obtain cover.

Owners may be required by ACHA to exhibit evidence of existing buildings insurance with the signed copy of this agreement and copies of the new policies after renewal and annually thereafter.

IMPORTANT NOTE TO OWNERS: Owners should note that buildings insurance cover does not include personal effects, furniture, fittings, etc and it is their responsibility to ensure that they are adequately covered in this respect by household contents insurance.

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4. REPAIRS AND IMPROVEMENTS

4.1 Maintenance, Common Repairs and Major Repairs

In the event of a common repair being required, common repairs should be reported to our repairs hotline – 0800 028 2755 - as early as possible. A record will be kept of the date and the name of the person reporting the repair together with details of the problem.

Repairs are carried out under three categories, which are detailed below, along with the timescale for the repairs to be completed.

Emergency Repair	Response within 2 hours and completed within 24 hours
Urgent Repair	Responded to and completed within 5 working days.
Routine Repair	Responded to and completed within 20 working days

Repairs will be carried out by ACHA's approved contractors.

Except in the case of an emergency, in which case ACHA will find the most suitable and available contractor, to carry out the works:-

Owners will be notified of costs likely to exceed £100 per flat/unit.

Repairs costing less than £200 per flat/unit will be instructed without reference to the owners.

In the case of repairs likely to exceed £200 per flat/unit the owners will be notified in writing of the nature of the work, the total costs, and the share of the costs due by them. Owners will have fourteen days from issue of notification to advise ACHA in writing of any objections to the proposed works. In the absence of any written objections within the said fourteen day period then owners will be deemed to be in full agreement with the proposed major repairs. Major repairs will only be instructed on the agreement of the majority of owners (counting one vote per dwelling house).

Each owner will be bound to pay their share of the costs of any such repairs, consultants fees (where necessary), planning and/or building warrant charges (where applicable) and ACHA's costs and charges.

Repairs and maintenance carried out shall be done in accordance with the Tenements (Scotland) Act 2004.

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4.2 Recovery of Owners' Costs for major works

Major work to owners' properties shall not commence until ACHA has received payment of the full amount as detailed below, together with the signed Factoring Agreement which hereby authorizes the Association to undertake the works once agreed by the majority of owners.

Prior to work commencing each owner shall pay ACHA the amount of the anticipated works cost, their proportion of consultants fees, planning and/or building warrant charges, where applicable, and the Association's administrative charge together with a contingency equal to 10% of the anticipated works cost.

Such amounts received by ACHA shall be placed in a suspense account, which shall be drawn upon to meet interim and final certificates as they fall due. Once the account has been finally reconciled any overpayments will be refunded to the relevant owners.

4.3 Right of access

ACHA, its authorised representatives and contractors, will have a right of access to the whole property including individual houses where this is required for inspection; or to affect a repair to common parts or services; or to prevent damage to the property.

Three days notice will normally be given, except in the case of emergencies.

4.4 Emergencies

Emergencies shall be defined as circumstances or situations which are considered dangerous or seriously detrimental to the safety of the property or persons.

Such repairs will be instructed outwith normal procedures and without recourse to the owners.

In the case of an emergency the owners are required to permit immediate access to the property.

Emergency repairs should be notified to the repairs hotline on 0800 028 2755 who will contact the appropriate contractor.

All emergency works will be charged to owners through the quarterly factoring accounts.

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4.5 Cyclical Maintenance

Cyclical maintenance provides for the regular maintenance of the fabric of the building, e.g. painting of close doors, external faces of window frames, cleaning of guttering, drainage inspection.

Approval from the majority of owners is required for works to proceed.

Owners will be notified in writing of the proposals for cyclical maintenance, total costs, and the share of the costs due. Owners will have fourteen days from issue of notification to advise ACHA in writing of any objections to the proposed improvement works. In the absence of any written objections within the said fourteen days then owners will be deemed to be in full agreement with the proposed maintenance work proceeding.

Cyclical maintenance will be instructed on the agreement of the majority of owners.

4.6 Improvement Works

From time to time ACHA or owners may determine that certain improvements will bring long term benefits to the property, prior to materials reaching the end of their life, and replacement may be recommended before the works become essential repairs. In the event of ACHA or the owners identifying potential improvement works then these will be carried out only on the agreement of the majority of owners.

Owners will be notified in writing of the nature of the improvements, total costs, and the share of the costs due. Owners will have fourteen days from issue of notification to advise ACHA in writing of any objections to the proposed improvement works. In the absence of any written objections within the said fourteen days then owners will be deemed to be in full agreement with the proposed improvement works. Improvement works will only be instructed on the agreement of the majority of owners (counting one vote per dwelling house).

4.7 Common Areas

Under the terms of the title deeds of the property, deed of conditions or in terms of the Tenements (Scotland) Act 2004 it is each owners responsibility to maintain the common areas e.g. close, stairs, landing, backcourts, gardens, grounds, etc unless there is an agreement for these services to be provided on the behalf of the owners by ACHA.

In the absence of such an agreement, if an owner fails to discharge their responsibility to maintain common areas, ACHA will be entitled to arrange for the necessary work to be carried out and levy a charge on the owners.

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4.8 Owners obligation

Owners are responsible for intimating any common repairs to ACHA that requires work carried out. Owners are responsible for their own property and privately owned ground, parking, pathways etc.

Instructions shall be taken on the majority decision of owners.

4.9 Services

Owners may request that ACHA arranges to have services carried out.

ACHA will obtain competitive quotations for works expected to exceed £5,000 per block and submit these to the owners for approval.

The consent of the majority of owners is required before new services can be implemented.

The provision of statutory services outwith the control of ACHA eg stair lighting, will not be subject to competitive quotations and these will therefore be charged at cost to the owners.

5. NEW BUILD/REFURBISHED PROPERTIES

5.1 Defects Liability in Relation to New or Refurbished Properties

Defects are usually the responsibility of the contractor.

Defects are not repairs which arise through accident, negligence, wilful damage or any other external factors which could not reasonably be deemed to be the responsibility of the contractor.

Where defects arise, they should be reported immediately to ACHA who will inform the contractor. The contractor will attend to defects at his own expense where it is contractually their duty and within a reasonable timescale consistent with the severity of the problem.

Immediately prior to the expiry of the defects liability period each flat will be inspected by ACHA, and, where appointed a Property Services Officer, and the Contract Architect to establish whether any other defects exist which will require the contractor's attention.

The Owner will be notified in writing of this visit.

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6. TERMINATION, DISPUTES AND FORMALITIES

6.1 Change of ownership

In the event of the property being sold the owner's Solicitor will notify ACHA in writing of the date of sale, the new owners full names, contact address, and their Solicitors details. The owners undertake to make the purchasers aware of the Factoring Agreement and the appointment of ACHA as factors.

6.2 Terminating the factoring agreement

The Factor shall be ACHA so long as they are owners of at least one of the dwelling houses in the property. In the event of ACHA no longer being owners of any dwelling house in the property then the Factoring Agreement may be terminated at the date of sale. ACHA will advise the owners in writing of the termination of the agreement.

ACHA retains the right to transfer their rights and obligations under this Factoring Agreement to a third party to act as Factor, should ACHA, in its sole discretion, deem it appropriate.

ACHA retains the right to continue factoring the block at the request of owners following on the sale of all property formerly belonging to ACHA in the same block.

Owners retain the right to dismiss ACHA as factors by simple majority as detailed in the Tenement (Scotland) Act 2004.

6.3 Neighbour Disputes

Owners are expected to conduct themselves in a manner which does not cause annoyance or nuisance to their neighbours and in accordance with statute and local laws and title deeds.

Any breaches of status or conditions laid down in the Title Deeds should be referred to ACHA for advice or intervention as required. This will not, however, prejudice the right of any owner to take such legal action as they see fit nor will it oblige ACHA to take legal action.

6.4 Arrears

ACHA will adopt a flexible and reasonable approach to ensure that arrears are minimized and the outstanding debts are recovered.

All payments are due within fourteen days of the invoice being issued. Two reminder letters will be sent to the owner and failure to pay invoices on time will

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be actively pursued and court action may be raised against owners for non-payment.

Accounts that remain unpaid will be subject to expenses and outlays for recovery and court action will commence against the owner to recover the outstanding amount. This could result in further expense, as the owner will be liable for Court and any additional expenses incurred by ACHA in pursuing the debt.

Should a decree be awarded by the Court against the owner, this may result in the lodging of an arrestment of the owner's wages or bank account, or the attachment and auction of the owner's personal assets. In addition a Notice of Potential Liability may be registered against your property which may affect any future sale. On repayment of the debt in full (including any expenses incurred) the Notice of Potential Liability will be Discharged. All costs will be due by the owner.

A decree recorded in the owner's name may also adversely affect their future credit rating.

6.5 Disputes with ACHA

Complaints or disputes regarding repairs or maintenance works should be referred in the first instance to the relevant member of staff in accordance with the Association's complaints procedure (see owners handbook).

If the dispute is not resolved, independent arbitration by the local Sheriff within the locality of the property, or the Housing Association Ombudsman or their successors may be sought by the owners. In this case both ACHA and the owners will be bound by the findings of the arbiter. Costs shall be borne by the owner pending determination of the decision by the Arbiter.

Notwithstanding the foregoing provisions, ACHA reserves its right to pursue through the Courts any claim for unpaid factoring fees and charges.

6.6 Acknowledgements

ACHA is registered with the Information Commissioner and is subject to the provision of the Data Protection Act (Scotland) 1998. ACHA may retain your personal details and associated data provided to you for as long as you remain a member of the factoring service. You give your consent for that information to be held however we will not pass any information to a subsidiary or a third party related or otherwise to ACHA without your express agreement unless provided for under the Act(s).



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This Agreement shall be covered by Scots Law and signing the Agreement may have important legal consequences. You are advised to take independent legal advice before signing this Agreement.

The owner acknowledges receipt of a copy of this Agreement; The owner and ACHA consents to registration in the Books of Council and Session; These presents are:-

SUBSCRIBED for and on behalf of the said Argyll Community Housing Association Limited as follows:-

Place of signing:

Date of signing:

.....
.....

Name of Authorised signatory

SUBSCRIBED by the owners as follows:-

Place of signing:

Date of signing:

..... Witness

..... Full name

..... Owner 1

..... Address

..... Owner 2

.....

.....

..... Occupation

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APPENDIX I

SERVICE:-	COST*:-
Factors Float	£100
Property Management fee (with common close)	£80
Property Management fee (no common close)	£40
Administration fee	5%
Maintenance Planning Property Inspection fee (on instruction by majority of owners)	£20

*Note: At the time of printing ACHA is not registered for VAT and therefore no VAT is payable. In the event of the circumstance changing and VAT being payable then VAT will be due by owner.



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APPENDIX II

[Attach plan](#)

Agreement Creation Date: April 2008

Agreement Last Amended: 1 October 2008