



Income Recovery / Distribution of Debt / Legal Costs etc.

A homeowner's guide to the
development's collective
financial responsibility and
debt recovery procedure.

doing it the
right way



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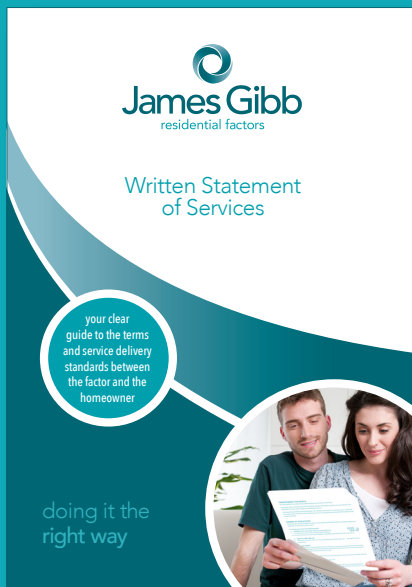
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At James Gibb residential factors, we strive to offer an exemplary level of service at all times.

This guide, and others produced, should help answer any queries you may have.

Authorised and regulated by the Financial Conduct Authority for insurance mediation purposes only.

James Gibb residential factors is a trading name of James Gibb Property Management Ltd, registered as a limited company in Scotland (No. SC 299465). VAT Reg No. 268 6033 43.

Registered office: Bellahouston Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ.

Registered Factor No.PF000103

SECTION 1 – Background to Income Recovery

James Gibb Property Management Ltd, trading as James Gibb residential factors, manages the development for and on behalf of homeowners and, like any business, it requires management of income and expenditure.

In Scotland, common areas, (freehold), are owned by the collective homeowners within a development. As duty holders you are responsible for the management and maintenance of a development and have appointed a property manager/factor to carry out these duties on your behalf. In your development it is James Gibb. Among many other core services, as part of our service to owners, we perform income recovery duties on behalf of the development.

Financial responsibility

Every homeowner should be aware that they share a financial responsibility with their fellow homeowners. Failure to pay common charges could compromise the proper maintenance, repair and servicing of the property and, potentially, put buildings insurance, if supplied, at risk.

A development's funds are held in our client account on behalf of the co-proprietors and, as such, each development must operate like a mini business where income and expenditure is monitored and, like any business that has debtors and creditors, debt must be carefully and properly managed.

Any debt, therefore, lies with the development as a whole and, while it is our responsibility to pursue those individuals whose accounts have a debit balance, it is not our responsibility to "prop up" those developments that are without funds.

In most cases, your deed of conditions will state that debt which your factor has been unable to collect should be distributed amongst the remaining homeowners, if the factor has used all reasonable steps to recover the debt. Of course, if, or when, the debt is eventually collected, the received funds will be distributed amongst the remaining homeowners.

To help protect the homeowners and the negative consequences which can follow from this, we have in place a fair and effective income recovery procedure which is an essential element of the Factoring Services we provide for our clients. This procedure is managed by our Income Recovery Team.



SECTION 2 – Income Recovery Process

- **STAGE 1: Reminder** – A stage 1 reminder is issued following expiration of the 14 day payment terms provided on our invoices. This reminder carries no penalty but advises that immediate payment of the outstanding amount is required to avoid a late payment fee.
- **STAGE 2: Reminder** – If no payment is made following the stage 1 reminder, a stage 2 letter is issued. This will include a Late Payment Fee of £30 which is applied to the debtor's account in their next invoice. It allows a 7 day period for payment to be made and gives notice that the account will be passed to our appointed solicitor should payment not be made.
- **7 Day Demand Letter** – Should no payment be received by the date specified in the stage 2 letter, a 7 day demand letter is issued by our appointed solicitor. This letter advises of impending court action should payment not be made within 7 days.

It is important to note, at this point, clients still have the opportunity to make settlement and avoid court action and any negative impact on their credit rating, and clients are urged to do so. They are also advised that under certain conditions James Gibb Property Management Ltd may be able to agree settlement by reasonable instalments.

- **Court Action** – court action will be instigated if all of the above have failed to prompt payment. Our appointed solicitor will raise the action with the court in the applicable jurisdiction under the "Simple Procedure". A summons will be served on the debtor with a return date to the court followed by a hearing date where decree plus court expenses will be sought from the debtor. In the debtor's response to the court, they have the option to accept liability, defend the action or submit a Time to Pay Application.

In some cases the matter will be referred to mediation. Further information on the Simple Procedure and the impact a decree has on an individual can be found at www.scotcourts.gov.uk.

Once decree has been granted, further enforcement options are available including, but not limited to, rent arrestment, earnings arrestment, bank arrestment, attachment orders, inhibition and sequestration. Each case will be assessed on its merit to determine which course of action, if any, is taken against a debtor.

- **Notice of Potential Liability** - A Notice of Potential Liability is a legal instrument that is lodged against the title of a property, not the individual owning the property, which prevents an owner from selling the property with a clear title. The notice is registered for a period of 3 years, or until satisfied, and states that there are unpaid costs in relation to the property as per the burdens within the Deed of Conditions. A Notice of Potential Liability is a transferrable burden. This means if a property is sold, without the Notice being cleared, the burden passes to the new owner who becomes liable. If the debt remains outstanding at the end of the 3 years' registration period, a new Notice will be lodged against the property and will continue to be registered until the debt is satisfied. There are administrative costs associated with the registration and discharge of a Notice of Potential Liability which are also recoverable.

Disputed items on Invoice

If there is an item on your invoice which you wish to dispute this should be reported to your Development Manager. They will log the value of this item as a disputed item in your account. All other non - disputed amounts should be paid. The disputed amount will be excluded for Income recovery actions until the dispute is resolved.

Financial Difficulties

If you are experiencing financial difficulties we would urge you to seek advice from one of the following free and impartial public bodies

Money Advice Service - www.moneyadviceservice.org.uk

Financial Ombudsman Service - www.financial-ombudsman.org.uk

Citizens Advice Bureau - www.citizensadvice.org.uk

National Debtline - www.nationaldebtline.co.uk

Please also advise our Income Recovery team who may be able to assist in providing an instalment / payment plan. Such a plan, if agreed and maintained, will prevent court action etc.

If you do not have access to the internet, your local library may be able to provide free access.



SECTION 3 – Distribution of Legal Costs

The pursuit of debt within a development is a core service provided by James Gibb Property Management Ltd. Included within this is the liaison with solicitors, preparation of court documents and court and mediation attendance. No additional fee is imposed by James Gibb Property Management Ltd. for this work. There are, however, court expenses, warrant dues, solicitor's fees, sheriff officer's fees and other such fees incurred in the process. These charges are a common charge to the development and charged in accordance with the Deed of Conditions or, where the Deeds are silent, in accordance with the Tenement (Scotland) Act 2004. These charges are detailed as 'Legal costs for the recovery of debt' within your service charge account. In all cases, we will seek recovery of expenses and interest from the court although these are capped based on the level of the claim. Where expenses are recovered these are credited to the development as 'Legal income from the recovery of debt'. In many cases the expenses awarded do not match the costs incurred and a deficit may exist.

As an example; in a development of 30 properties with a debtor owing £1500, the cost to raise and serve the summons costs £200 however expenses awarded are capped at £150, therefore a deficit of £50 is apportioned to 30 owners @ £1.66 each. If we did not pursue the debt, eventually the cost would be deemed irrecoverable and become a development cost. £1500 would be apportioned to 30 properties @ £50 per property.



SECTION 4 – Distribution of Aged Debt or Irrecoverable Debt

On an annual basis, we will review any aged debt or debt that is deemed to be irrecoverable within a development. Aged debt can relate to previous owners within the development who have failed to settle their final balance to the point of sale or a current owner who has accrued a level of debt that we have been unable to recover through the standard legal proceedings. Irrecoverable debt can exist when an owner has entered a Trust Deed, been sequestrated or some other reason that deems the debt irrecoverable.

To charge out aged or irrecoverable debt to a development is not a decision we take lightly and is a last resort in keeping the development financials in a sound position to secure the ongoing services provided.

If we do have to take such action within your development, we will give formal notice and relevant details before doing so. Any charges would then appear on your next scheduled invoice. We can also confirm that we will continue to actively pursue any such distributed debt, where legally possible, on your behalf, and return all received amounts to you when collected.



SECTION 5 – Online Credit Control

We have introduced a new tab on your James Gibb+ Portal; Credit Control. The Portal is available via our website. This shows you the type and value of any debt within your development.

We should point out that, just after the quarterly invoices are released, the level of “normal” debt will be high as we await on-time payments to settle accounts. Nearer each quarter end (towards end Feb, May, Aug and Nov), when all accounts should be settled, you’ll be able to see the level of debt, within your development, that we’re having to pursue.

If you don’t have access to the internet you can call our Income Recovery Team on 0333 240 8325 for details of your development debt.

We also cover any debt issues at the many AGMs to which we are invited, and this gives us a good opportunity to discuss your development’s financial health.

SECTION 6 – Keeping on top of your account

To ease the burden, and facilitate the management of your account, we would recommend the following;

Electronic communications – by signing up to receiving all invoices and documentation via electronic means will ensure you receive information about your account in a timely manner.

James Gibb+ App – by downloading the App onto your mobile device you can receive notifications to alert you to a new invoice or documentation being generated on your account.

Direct Debit – we offer monthly fixed and quarterly variable direct debit payment to help you keep your account up to date. This can be set up online via the James Gibb+ portal or by contacting our office. If you chose to pay by monthly fixed Direct Debit and a deficit accrues due to the monthly amount being insufficient, an annual review and additional payment will be taken to bring your account back up to date.



SECTION 7 – FAQ's

I have received my invoice but there are charges I believe are wrong, I don't want to pay them until they are resolved, what should I do?

Firstly, contact our office to query any charges you feel are wrong. The matter will be investigated with the relevant department who will advise you if there is an issue.

During investigation, the item will be placed 'in dispute' by our Income Recovery Team. This will remove the amount in question from any Income Recovery Process. Once resolved, you will be informed whether the dispute is upheld. If upheld, the cost will be credited on your next quarterly invoice. If the cost is deemed to be valid, payment will be due on notification of the dispute being resolved.

***PLEASE NOTE: All other charges except those confirmed in "dispute" remain due and must be paid within the due date.**

I am selling my property and I have a Notice of Potential Liability on my property, I am unable to pay the arrears on my account, what will happen?

We will ask your solicitor for a "Retention" amount which will clear all charges on your property. For Properties with Notices of Potential Liability, the fee for removal of this will be charged to your account and requested from your solicitor. Once payment is received, the Notice of Potential Liability will be removed.

I am struggling to pay my account due to issues out with my control, what do I do?

Please contact the Income Recovery Team who will discuss options with you.

You have distributed debt and added it to my invoice, why do I have to pay when the debt is yours?

The debt belongs to the development account, not to James Gibb Property Management Ltd. We manage the development account on behalf of the owners, all contractor invoices and any other costs are paid from the development account and it must be in funds.

I am a landlord and my letting agent/tenant has not advised me of debt accruing on my account.

As the legal owner of the property our contract is with you, not the letting agent or tenant. It is your responsibility to ensure we have current contact details for you to ensure all invoices and documentation issued from our office are received by you.

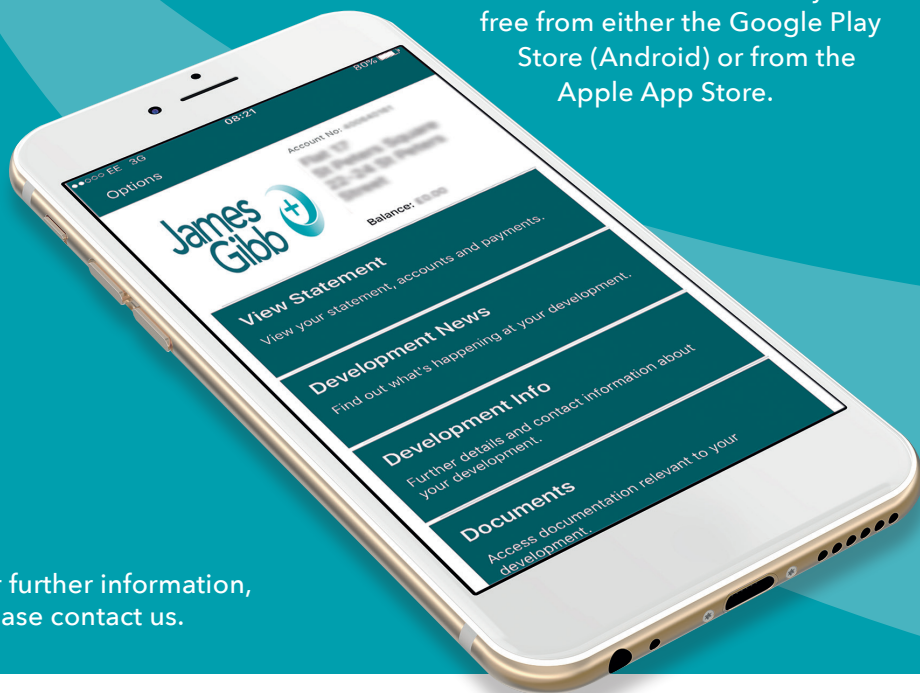
SECTION 8 – Communication

All correspondence sent from our Income recovery team will contain reference to agencies where assistance and advice can be provided to you. We also urge any client experiencing financial difficulties in paying their invoice to contact our Income Recovery Team.

We understand that receiving reminders and letters from solicitors can cause distress to clients. However, our staff are experiencing unacceptable levels of verbal abuse when discussing debt issues with clients. This is unacceptable and prevents our Income Recovery Team from being able to assist clients. We operate a zero-tolerance level on abusive behaviours both verbal and written.



The James Gibb+ mobile phone app can be downloaded absolutely free from either the Google Play Store (Android) or from the Apple App Store.



For further information,
please contact us.

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Registered property factor no: PF000103



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