



# **Clackmannanshire Council**

## **Housing Service**

### **Abandoned Property Policy**

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## **1. Scope of the Policy**

Clackmannanshire Council aims to re-let properties as quickly as possible in order to minimise rent loss resulting from abandonment of properties, while ensuring that full investigations are carried out to establish whether property has been abandoned.

Clackmannanshire Council's Abandoned Property Policy sets out a framework of how abandonment proceedings will be carried out to enable the Council to terminate a tenancy agreement made between a tenant and the Council where the tenant has abandoned the property. The policy will allow the Council to manage its limited housing stock effectively and efficiently, and ensure properties are made available to Council residents when the previous tenants have abandoned their tenancy.

## **2. Aims of the Policy**

This policy aims to:

- Make the best use of the Council's housing stock by determining whether a property is abandoned and ensuring that abandoned properties are re-let quickly;
- Minimise the time a property remains unoccupied and any potential rental loss arising from it;
- Protect the tenants' rights by ensuring that thorough investigations are made into the occupancy of the property before starting the abandonment proceedings;
- Make sure all abandonment proceedings meet the legislative requirements.

## **3. Legal Framework**

Clackmannanshire Council will ensure that this policy adheres to all legislative requirements under relevant legislation.

The main legislative framework for abandonment proceedings is set out in the following legislation:

- Housing (Scotland) Act 2001
- Scottish Secure Tenancies (Abandoned Property) Order 2002

## **4. Single Tenancy Abandonment Proceedings**

### **4.1. Notice of Abandonment**



If the Council reasonably believes that a property is unoccupied and the tenant does not intend to live in it, the Council may serve a notice on the tenant to start the abandonment proceedings. The notice must state that:

- The Council believes that the property is unoccupied and the tenant does not intend to live in it;
- The tenant must inform the Council in writing if they intend to live in the property within 4 weeks of receiving the notice;
- The tenancy will be terminated at the end of the 4-week period if the Council believes that the tenant does not intend to live in the property.

The notice can be served on the tenant by handing it in-person, posting it or leaving it at their last known address.

#### *4.2. Carrying Out Investigations*

The Council will investigate to confirm that the property is unoccupied and that the tenant does not intend to live in it within the 4-week period after the notice has been served. Inquiries may include, but are not limited to:

- Checking for signs of occupancy, including any recent rent payments made or any recent repairs carried out;
- Contacting other departments and/or partner services and agencies such as Social Work or Criminal Justice;
- Contacting neighbours, friends, relatives or Police Scotland.

#### *4.3. Contact from the Tenant*

If the tenant makes contact within the 4-week period to inform the Council that they intend to live in the property, the abandonment proceedings will be cancelled.

#### *4.4. Ending the Tenancy*

At the end of the 4-week period, if the Council has served the required notice, and is satisfied that the tenant has abandoned the property, it may serve a further notice on the tenant which immediately ends the tenancy.

#### *4.5. Securing the Property*



Once the Council establishes that the property has been abandoned, the Council may enter the property to secure it and/or any fixtures and fittings within it against vandalism. This may include arranging a forced entry. Lock change will be necessary following any forced entry which may be rechargeable to the tenant.

#### *4.6. Collection of Possessions*

Once the first Notice of Abandonment has been served, the Council will also serve a property notice on the tenant stating that their possessions are available for collection from the property within a 4-week period.

The notice can be served on the tenant by posting it or leaving it at their last known address.

On the expiry of the 4-week notice, the Council may dispose of any remaining property.

### **5. Joint Tenancy Abandonment Proceedings**

#### *5.1. Notice of Abandonment*

If the Council reasonably believes that a tenant under a joint tenancy agreement (the abandoning tenant) is not living in the property and does not intend to live in it, the Council may serve a notice on the abandoning tenant to start the abandonment proceedings. The notice must state that:

- The Council believes that the abandoning tenant is not living in the property and does not intend to live in it;
- The abandoning tenant must inform the Council in writing if they intend to live in the property within 4 weeks of receiving the notice;
- The Council will serve another notice to the abandoning tenant at the end of the 4-week period, if the Council believes that the abandoning tenant does not intend to live in the property.

Each notice can be served on the abandoning tenant by handing it in-person, posting it or leaving it at their last known address.

A copy of both notices must be served on each of the other joint tenants under the joint tenancy agreement.

#### *5.2. Carrying out Investigations*



The Council will investigate to confirm that the abandoning tenant is not living in the property and does not intend to live in it within the 4-week period after the first notice has been served. Inquiries may include, but are not limited to:

- Checking for signs of occupancy;
- Contacting other departments and/or partner services and agencies such as Social Work or Criminal Justice;
- Contacting neighbours, friends, relatives or Police Scotland.

### *5.3. Contact from the Abandoning Tenant*

If the abandoning tenant makes contact within the 4-week period, an interview will be arranged with them to determine the reasons for their absence from the property.

Following the interview, the abandonment proceedings may be cancelled if the Council is satisfied that there were sufficient reasons for the tenant's absence.

If the joint tenant was absent from the property because they no longer wish to live at the property, they may transfer the tenancy to the other tenant. The joint tenant will then end their tenancy, the Council will reallocate the property to the other tenant as a sole tenancy agreement and the abandonment proceedings on the joint tenant will be cancelled.

### *5.4. Ending the Tenancy*

If the Council has served the first notice, and is satisfied that the tenant has abandoned the property, it may serve a further and final notice on the abandoning tenant. The final notice specifies when the abandoning tenant's interest in the tenancy will end. This must be at least 8 weeks after the date when the final notice is served.

## **6. Equal Opportunities and Diversity**

Clackmannanshire Council is committed to the elimination of unlawful discrimination, advancing equality of opportunity and fostering good relations between people.

The Council believes that equality of opportunity should be a guiding principle in all of its activities. The Council aims to ensure that its commitment to equality is embedded in all council services and in the organisations that it funds.

In accordance with the Equality Act 2010, the Council is actively working towards the elimination of policies and practices that discriminate unfairly on grounds including age; disability; gender





reassignment; marriage and civil partnership; pregnancy and maternity; race including colour, nationality, ethnic or national origin; religion or belief; sex; and sexual orientation.

## **7. Privacy Statement**

Clackmannanshire Council must adhere with its legal obligations under Data Protection Legislation as set out in the Data Protection Act 2018 and UK General Protection Regulation (GDPR).

In order to provide the required and/or requested services, the Council will collect, store and process relevant personal information or data.

Personal information may also be shared with other partner agencies and organisations.

Personal information will be kept securely, as long as required by law and/or by specific service requirements. Once the data is no longer required, it will be securely disposed of. The Council has a Record Retention Schedule which sets out the period of time and reasons for keeping particular records. The Retention Schedule is available on request.

Under the Data Protection Act 2018 and the Freedom of Information(Scotland) Act 2002, individuals have the right to access personal information and data held about them by Clackmannanshire Council as well as the right to access information from records held by the Council.

To submit a Subject Access or Freedom of Information request, please follow [the link](#).

To make a complaint in relation to the Council's handling and processing of personal data and information, please contact the [Information Commissioner's Office](#).

For further information on Clackmannanshire Council's data protection practices, please visit the Council's [Data Protection Statement](#). For the Council's Data Protection Policy, please follow the [link](#). For further information on freedom of information laws, please visit the [Scottish Information Commissioner webpage](#).

## **8. Complaints**

If the tenant is dissatisfied with the provided services and/or the standards of service, please follow the Council's Complaints Procedure. Complaints can be made in person, in writing, by email or online. For further information on the Complaints Procedure and how to make a complaint, please visit the [Council's Complaints Procedure webpage](#).

If the tenant remains dissatisfied with the final decision or the way the complaint has been handled following the Council's Complaints Handling Procedure, they can make a complaint to the Scottish Public Services Ombudsman (SPSO) by completing a [complaints form found online](#) or calling on 0800 377 7330.



For further information on how to make a complaint to SPSO, please visit the [SPSO website](#).

## **9. Appeals**

### *9.1. Single Tenancy*

A tenant who has had their tenancy agreement terminated following the abandonment proceedings may apply to the Court within 6 months after the date of the termination to have the decision reassessed, if the Council:

- Failed to follow the procedures correctly;
- Did not have reasonable grounds to believe that the property was unoccupied or that the tenant did not intend to live in it;
- Was in error in finding that the tenant did not intend to live in the property, and the tenant had a reasonable cause for failing to notify the Council of their intention to live in it.

If the Court finds the Council's decision following the abandonment proceedings to be invalid, the Court must:

- Make an order to continue the original tenancy, if it has not been let to someone else;
- If the original property has been re-let, the Council must provide the tenant with other suitable accommodation;
- Make any other relevant order relating to the tenancy.

### *9.2. Joint Tenancy*

A tenant under a joint tenancy agreement may apply to the Court within 8 weeks after the date of the service of the final notice which ends their tenancy to have the decision reassessed, if the Council:

- Failed to follow the procedures correctly;
- Did not have reasonable grounds to believe that the joint tenant was not occupying the property or that they intend to occupy it as the tenant's home;
- Was in error in finding that the joint tenant did not intend to live in their property, and the joint tenant had a reasonable cause for failing to notify the Council of their intention to live in it.

If the Court finds that Council's decision following the abandonment proceedings is invalid, the Court must:



- Make an order to continue the joint tenant's original tenancy;
- If it is not reasonable to continue their original tenancy , the Council must provide the joint tenant with other suitable accommodation;
- Make any other relevant order relating to the tenancy.

## **10. Monitoring and Reviewing**

The policy will be continuously monitored to ensure that it is performing efficiently against the aims set out in the policy.

The Council will review and evaluate this policy every 3 years to ensure the adherence to the relevant legislation and statutory guidance as well as changes in organisational practices and policies.