

ALMSHOUSE ASSOCIATION MEMBERS DAY CONFERENCE

Setting Aside Scenarios





SETTING ASIDE SCENARIOS

PART 1

Setting Aside: the importance of understanding the background basics

Status of Almshouse Residents

- Beneficiaries of the Charity, **not** tenants (affirmed by Court of Appeal)
- Licence to reside in their accommodation with Trustees' permission
- Trustees exercise powers to appoint beneficiaries
- Qualifying beneficiaries

Trustees' Powers of Appointment

- Trusts of Charity
- Class of beneficiaries
 - Charity Commission consent required to authorise changes
 - Trustees' legal duties to keep up to date
- Eligibility? Trustees' discretion
 - who is most in need within class of beneficiaries?
 - criteria, policy, fairness

Trustees' Powers of Appointment

- Trustees' collective responsibility to appoint residents
- Nomination agreements
- Trustees' cannot delegate out of their duties and responsibilities
- Minute appointments
- Relationship of trustee and beneficiary, not landlord and tenant

Circumstances where Appointment could be set aside

- Appointment of a beneficiary may be set aside if:
 - no longer qualifying
 - failure to pay weekly maintenance contribution;
 - breach of regulations/anti-social behaviour/serious misconduct/nuisance to neighbours
 - refusal to allow reasonable access to maintain/repair (e.g. monitoring equipment); or
 - risk to themselves or other residents/staff
 - abandonment of almshouse dwelling

Trustees sometimes have no option but to take action

- Anti-social behaviour policy and procedures
- Trustees' duties to protect residents, staff
- Trustees cannot commit a breach of trust
- Trustees' duties to fulfil the Charity's aims and abide by the terms of its Trusts/preserve Charity's reputation

Trustees sometimes have no option but to take action

- Permitting residents to remain in occupation if they cease to be qualifying beneficiaries
 - change of residents' circumstances
 - may consider asking to leave BUT
 - not necessarily a breach of trust in every case
 - check trusts (trustees' discretion?)
 - seek legal advice
 - “qualifications of residents” clause?
 - Charity Commission
 - Risk management (avoid adverse publicity)

Letter of Appointment - a key document

- Beware “DIY” documents
- Almshouse Association Model Letter of Appointment
- Annex C Standards of Almshouse Management
- Letter of Appointment issued and signed in duplicate (copy for resident and Almshouse)
- Read and understood, go through it with residents beforehand, and minute this has happened
- Confirms appointment as a beneficiary (resident) not a tenant
- Specifies regulations for residents
- Weekly maintenance contribution

Letter of Appointment - a key document

- Access for maintenance, repair, decoration, inspection (e.g. alarm monitoring systems)
- Right to move residents to another dwelling of the Almshouse
- Almshouse Association Model Letter of Appointment confirms Trustees' powers to set aside appointment if:
 - serious misconduct/anti-social behavior
 - breach of regulations
 - if resident is no longer a qualifying beneficiary
 - risk to themselves or other residents/staff
 - failure to pay weekly maintenance contribution
- Residents informed of Trustees' powers to set aside appointments and in what circumstances used

Risk Management

- Trusts' and Charity's aims/objects up to date?
- Clear and up to date definition of qualifying beneficiaries?
- The Charity Commission, prior written consent to regulated alterations
- Application form - Standard of Almshouse Management, Appendix A
- Clear criteria for guidance of trustees/panel selecting residents
- Residents Handbook (Almshouse Association specimen handbook)

Risk Management

- Complaints/grievance procedures (communicated to residents) (Almshouse Association Model - Appendix J)
- Anti-social behaviour policy and procedures - Standards of Almshouse Management, Appendix M
- Trustees need to be aware of difficulties and genuine complaints (avoid 'disconnect')
- Review documents and policies to keep up to date



SETTING ASIDE SCENARIOS

PART 2

Setting Aside - The Process

- The final step, one not to be taken lightly
- Take Advice at an Early Stage
- Is there no alternative?
- Resolution always better than litigation
- Mediation or other ADR



Warn, warn and warn again

- Verbal warning
 - Written warnings - distinguish between occupation **could be** at risk and occupation **is** at risk
 - Clarity is key
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Deciding to Set Aside

- Governing documents - do they dictate the steps you have to take?
- You may need to have a special meeting and pass a resolution dealing with the issue
- However it is done, ensure the process and decision is noted
- Notify the resident - confirm the decision and give Notice to Quit **AND** Notice Setting Aside

Court Proceedings needed

- Section 3 Protection from Eviction Act
- Part 55 Civil Procedure Rules
 - Be alert to issues of capacity (more to follow on this shortly)
- Local County Court
- Must provide full details of the occupancy and the nature of the claim
- Resident has 14 days to respond

The Hearing and Enforcement

- Supporting evidence
- Order - Possession, adjourn, dismiss
- Costs
- 14-28 days to leave
- Bailiff/High Court Officer
- Torts (interference with Goods) Act 1977



A couple of 'simple' scenarios where Set Aside may occur...

1. Non-payment of WMC

- Evidence is key
 - Regular letters chasing payment
 - Up to date WMC schedules showing when payment due, when paid (if it is), accumulation of arrears
 - Efforts made to assist resident in securing any benefits
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A couple of 'simple' scenarios where Set Aside may occur...

2. Anti social behavior

- What does the Letter of Appointment say? What behaviour is covered?
- Evidence is key
- Regular letters recording issues, attendance notes of complaints and efforts made to resolve matters
- Third parties involved? Mental Health Team? Alcohol & Substance Teams? Police?
- Will other residents, staff, etc provide statements if needed in the course of any possession action
- Make the point that action is taken for the fulfilment of the Charity's aims and objectives, and for the good of other residents, staff etc



A couple of 'simple' scenarios where Set Aside may occur...

3. Absence from the property

- What does the Letter of Appointment say?
 - 28 days absence, or 28 days continuous absence?
- What is the reason/are the reasons for the absence?
- How do you record absences?
- What other evidence do you have?
- Make the point that action is taken for the fulfilment of the Charity's aims and objectives





And a common issue where Set Aside may occur...

4. Loss of capacity

- Letter of Appointment will almost certainly say that the appointment can be set aside if resident cannot look after themselves and/or may expressly refer to loses capacity
 - Do you require a require residents to provide evidence of that they have completed a Power of Attorney, and also require them to keep you updated on whether that has been amended?
 - Capacity - a complicated area
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And a common issue where Set Aside may occur...

4. Loss of capacity

- Does anyone have Power of Attorney?
 - really? Have you seen it?
 - what type of Power is it?
 - Court of Protection
 - capacity
 - appointment of a Deputy
 - Litigation Friend in possession proceedings
 - Legal v practical
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Any questions?

Thank you for listening

Gerry Morrison

Partner and Head of Charities

01482 337339

gerry.morrison@rollits.com

Chris Drinkall

Partner and Head of Property Dispute Resolution

01482 337367

christopher.drinkall@rollits.com

[@drinkall_chris](#)