



DISPOSAL OF POSSESSIONS PROCEDURE

2023

1 Introduction

- 1.1 This procedure sets out how Mid Devon Housing (MDH) manages:-
- I) Possessions left in a MDH's property after the end of a tenancy and
 - II) Possessions found on MDH's land including communal areas left by a tenant or third party without the permission of MDH
- 1.2 This procedure seeks to ensure that the possessions are dealt with reasonably and in accordance with section 41 of the Local Government (Miscellaneous Provisions) Act 1982. It is important to note that in addition or as an alternative MDH may take action under the law of trespass and report any fly-tipping incidents for prosecution.

2 Procedure Aims and Objectives

- 2.1 When a tenant moves out of a MDH property they are required to take with them their personal belongings and give vacant possession of the property back to MDH but on occasions some tenants have been unable, for a variety of reasons, to comply with this legal obligation resulting in MDH having to deal with the possessions left behind.
- 2.2 Possessions from tenants, former tenants and third parties have been deposited on MDH's land or property (including communal areas) without permission of MDH amounting to trespass on MDH's property.
- 2.3 The aim of this procedure note is to set out what actions MDH will take when they find possessions in or on MDH's property or land.

3 Linked policies

- 3.1 This procedure is directly linked to the following policies:
- [MDH Tenancy Management Policy](#)
 - [Voids Management Policy](#)
 - [Fire Risk in Communal Areas Policy](#)

4 The law

- 4.1 Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") details the rights that MDH has to dispose of possessions left at MDH's properties (including communal areas).

- 4.2 If it is possible so to do, MDH can serve notice on the owner of the item left at the tenant's former property or on any land of MDH requiring the owner to collect the item by a date specified in the notice, and advising the owner that if uncollected the item will on that date vest in MDH. The specified date must not be less than one month from the date of the notice. No notice needs to be served, however, if it appears to MDH on the date when the item comes into its possession that it is impossible to serve a notice, in which case the item vests in MDH one month from that date.
- 4.3 If MDH does not form the view on the date when the item comes into its possession that it will be impossible to serve a notice, but subsequently—after reasonable inquiry—forms that view, then instead of vesting in MDH one month after the date when it came into its possession, the item vests in the MDH six months from that date.
- 4.4 If the item is perishable, or would otherwise involve MDH in unreasonable expense or inconvenience in looking after it, MDH may sell or otherwise dispose of it as and when and how it thinks fit, in which case the buyer takes a good title to it, and the proceeds of sale vest in MDH on the same date as the item would have vested if not sold.
- 4.5 MDH when it finds an item in its property or on its land does not have to leave the item in situ but may arrange for it to be stored pending resolution of what is to happen to the item. If an item is found on MDH property particularly communal areas which is causing a safety issue such as blocking of an emergency exit MDH will remove the item immediately. In other cases MDH may make initial inquiries to see if the owner is willing to immediately remove the item from the communal area. This decision to make inquiries and what form they take will be at the discretion of MDH and its officers.
- 4.6 At any time before the item vests in MDH, the owner may collect it, on payment to MDH of such sum as MDH may require in respect of costs incurred (a) in making inquiries, or serving notice, and (b) in looking after the item.

5 Storage of possessions

- 5.1 Where an item is left at MDH property and the item is perishable, or would otherwise involve MDH in unreasonable expense or inconvenience in looking after it, MDH may sell or otherwise dispose of it as it thinks fit.

- 5.2 When MDH decide to store possessions, reasonable care will be taken to ensure that all possessions are stored at an appropriate locked facility, where risk of damage or theft is minimised.
- 5.3 All possessions found deemed as a Health and Safety risk 3 (including infestations, sharps found on site, risk of blood-borne infection etc.), will be disposed of.
- 5.4 Photographic evidence will be kept of all stored possessions at both the point of collection and following removal to the locked storage facility; logged accurately with a date and time and kept on file on MDH electronic filing system.

6 Service of Notice

- 6.1 When a decision is made to serve a notice under Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 the rules set out in the following paragraph 5.2 to 5.6 apply.
- 6.2 An inventory of goods stored must be included in the notice.
- 6.3 The Notice must have a clear date by which the tenant is required to collect the stored possessions. This date must be at least one month from the day the notice was served.
- 6.4 The Notice will clearly state that the possessions listed in the notice will become the property of MDH when the notice expires.
- 6.5 The Notice will include the total daily charges levied by MDH for the storage of possessions, and the requirement to pay the removal and storage charges in full upon collection as well as the cost of in making inquiries, and serving the notice.
- 6.6 An explanatory letter should also be included with the Notice and should include an inventory of stored possessions, and will explain that MDH on the expiry of the notice will deal with all stored possessions as it sees fit. The letter will also state the charges that will be levied to the outgoing tenant for the removal and storage and, if the notice expires, the disposal costs.

7 Recovery of Possessions

- 7.1 At any time during the one month notice period owners can request return of their possessions verbally or in writing. In appropriate cases MDH will ask for proof of ownership.

- 7.2 Access to possessions must be given to the owners or their representative within 72 hours from receiving the request (not counting non-working days), following receipt of formal identification.
- 7.3 The following costs will need to be paid prior to collection:
- Removal and storage
 - Making inquiries,
 - Serving the notice
- 7.4 In the case of possessions found in a former tenant's property if a claim of ownership is made by someone other than the former tenant they must be asked to make a request in writing with a detailed description of all items requested together with supporting evidence of prove of ownership of the items. MDH will consider the evidence carefully before making a decision.

8 Expiry of Notice

- 8.1 When the notice expires, authorisation can be granted by the Operations Manager for Housing Management Services for the possessions to become the property of MDH.
- 8.2 The Housing Officer will put a proposal forward to the Operations Manager for Housing Management Services to either sell the possessions or dispose of them. Market value consideration will determine the option to follow.
- 8.3 If any funds still remain after payment of all the following, monies will be paid into the rent account as a credit.
- i. The removal and storage costs.
 - ii. The sale administration fee.
 - iii. Former tenant arrears (if applicable)
 - iv. Other debt owed to the Council.

9 Tenant dies intestate

- 9.1 In the case, where a tenant dies without a will and there is no other person entitled to statutorily succeed to the tenancy, in order to end the tenancy MDH will need comply with special rules regarding service of the notice to quit to end the tenancy.

9.2 In the case of intestacy, section 18 of the Law of Property (Miscellaneous Provisions) Act 1994 sets out a procedure for termination before probate or letters of administration have been granted. It provides as follows:

“(1) A notice [to quit affecting land which would have been authorised or required to be served on a person but for his death shall be sufficiently served before a grant of representation has been filed if— (a) it is addressed to “The Personal Representatives of” the deceased (naming him) and left at or sent by post to his last known place of residence or business in the United Kingdom, and (b) a copy of it, similarly addressed, is served on the Public Trustee.”

9.3 Provided the notice to quit is properly served in accordance with section 18 the tenancy will terminate on the expiry of the notice to quit.

9.4 After the tenancy has been properly terminated the deceased tenant’s possessions may still be at the property.

9.5 In order to resolve what happens to these possessions MDH will serve a notice under Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 to “The Personal Representatives of” the deceased (naming him) and left at or sent by post to his last known place of residence or business in the United Kingdom, and (b) a copy of it, similarly addressed, is served on the Public Trustee.”

10 Complaints

10.1 We try to get things right the first time and when we do, we would love people to let us know. It’s great for us to receive positive comments or feedback, so if people wish to complement our staff for doing a great job, we would love to hear from them.

10.2 If things do go wrong the council is committed to:

- Dealing with complaints and comments quickly and effectively; and
- Using complaints, comments and compliments to review and improve our services.

10.3 When a person contacts us to tell us they are dissatisfied with the service we have provided, we will offer them the choice to have an informal conversation to see if we can put things right quickly, without the need for a formal investigation.

10.4 The Housing Ombudsman Service advise that a complaint must be defined as:

- *'an expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the organisation, its own staff, or those acting on its behalf, affecting an individual resident or group of residents'.*

10.5 Where a tenant considers that the Council has given a poor service or has got something wrong, they may tell a member of staff in the first instance. This does not need to be treated as a formal complaint (unless the complainant asks us to do so) and may be resolved 'there and then' by way of an apology or plan of action. Any comments provided will be used to take appropriate action, or give information.

10.6 If a tenant does not want to do this or is unhappy with the response, they may make a formal complaint (stage 1), which can be escalated to stage 2 if they are still not satisfied with the response. If having been through stages 1 and 2 they are still not satisfied, the tenant may contact the Housing Ombudsman Service.

10.7 MDH's complaints procedure is detailed on the Council website: Feedback and Complaints

11 Review and version control

11.1 MDH will review this Procedure every 10 years and as required to address legislative, regulatory, best practice or operational issues.

11.2 This policy was produced in 2023 and is version 1