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Assignment, Sub Letting, Joint Tenancies & Succession Policy

AS WITH ALL OF THE ASSOCIATION'S POLICIES, THIS GUIDE IN FULL AND IN PART IS AVAILABLE IN SUMMARY, ON TAPE, IN BRAILLE, & IN TRANSLATION INTO MOST OTHER LANGUAGES – PLEASE ASK A MEMBER OF STAFF IF YOU WOULD LIKE A VERSION IN A DIFFERENT FORMAT

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CONTENTS

1. Introduction	Page 2
2. Assignment	Page 2
3. Subletting	Page 3
4. Joint Tenancies	Page 4
5. Succession of Scottish Secure Tenancy	Page 5 - 7
6. Adapted or Specially Designed Properties	Page 7
7. Eligibility Criteria	Page 7 - 8
8. Complaints	Page 8
9. Equalities and Human Rights	Page 9
10. Freedom of Information (FOI)	Page 9
11. General Data Protection Regulations (GDPR)	Page 9
12. Review	Page 9

1. Introduction

- 1.1 The Housing (Scotland) Act 2014 introduced changes that will support landlords to ensure the best use is made of affordable rented housing, while recognising the right to succeed to a Scottish Secure Tenancy and the rights of tenants to pass on their tenancy with the landlords consent

2. Assignment

- 2.1 Assignment describes the process that takes place when a tenant (the principal tenant) transfers the rights and responsibilities of their tenancy to another person (assignee). It is not the formation of a new tenancy, as the assignee will take over all matters relating to the tenancy. It is, however, a permanent arrangement whereby the assignee has all the statutory and contractual rights and obligations of the tenancy adopted.
- 2.2 Tenants have the right to assign their tenancy provided the eligibility criteria outlined in this policy are met. Consent to assign a tenancy will only be given by the Association after consideration of the circumstances of the tenant and the proposed assignee. It is the responsibility of the principal tenant to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers, of the assignment.
- 2.3 The house must have been the tenant's only or principal home during the 12 months immediately before the tenant applies for written permission to assign their tenancy, and the person that the tenant wishes to assign their tenancy to must have lived at the property as their only or principal home for the 12 months immediately preceding the application for assignment. The tenant, joint tenant or person that they wish to assign their tenancy to must have notified the Association that the person they wish to assign the tenancy to is living in the house. The 12-month period does not start until the Association has been informed in writing that the person is living in the property as their only or principal home and that permission to reside has been requested and approved by the Association. The Association will accept notification in writing or by e-mail. We will not accept verbal notification. In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home, no further notification is required.
- 2.4 Application for permission to assign a tenancy will take account of both the tenant's and the proposed assignee's circumstances and in all cases must satisfy the criteria set down in Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

3. Subletting

- 3.1 Tenants have the right to sub-let all or part of their home provided the eligibility criteria outlined in this policy are met and they have written permission from the Association.
- 3.2 Consent to sub-let a tenancy, will only be given by the Association after consideration of the circumstances of the tenant and the proposed sub-tenant.
- 3.3 There is no legal relationship between the sub-tenant and the Association. The principal tenant will continue to be responsible for all the conditions of the tenancy and for payment of rent directly to the Association.
- 3.4 It is the responsibility of the principal tenant to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers, of the sub-tenancy agreement.
- 3.5 The amount of rent charged to the sub-tenant cannot be higher than the monthly rent charged by the Association to the principal tenant. Any refundable deposit cannot exceed the equivalent of one month's rent.
- 3.6 The property must be let fully furnished and the sub-tenant should have use of all the fixtures and fittings.
- 3.7 The period of the sub-let will be for a maximum of 6 months, this being the minimum period of a Short-Assured Tenancy. However, the sub-let may be extended at the request of the principal tenant and the discretion of the Association.
- 3.8 The rent account of the principal tenant must be up-to date prior to submitting an application to sub-let.
- 3.9 The proposed sub-tenant must be approved by the Association, who will require a satisfactory report from any former landlord within the last 5 years. A sub-let will not be approved if the sub-tenant already has permanent accommodation or is not considered to be in housing need.
- 3.10 The proposed sub-let must not result in the property being under-occupied or overcrowded.
- 3.11 Specially adapted property (e.g. wheelchair accommodation) will not be eligible for sub-let unless the sub-tenant has a defined need for this type of property.
- 3.12 The principal tenant and the sub-tenant must agree in advance to use a Sub-Tenancy Agreement that is acceptable to the Association.

4. Joint Tenancies

- 4.1 A Joint Tenancy ensures that both persons have the same rights and responsibilities under the Scottish Secure Tenancy Agreement. A joint tenancy can be created at the commencement of a Tenancy between any two persons who were joint housing applicants. Thereafter the existing tenant can apply to the Association in writing for the creation of a joint tenancy.
- 4.2 Tenants have the right to apply to change their tenancy from a sole to a joint tenancy provided the eligibility criteria outlined in this policy are met.
- 4.3 Consent to a joint tenancy will only be given by the Association after consideration of the circumstances of the tenant and the proposed joint tenant.
- 4.4 It is the responsibility of the joint tenants to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers, of the creation of a joint tenant as both tenants will be equally liable for any payments and debt accrued.
- 4.5 In accordance with the Housing (Scotland) Act 2014 the Association will only permit an application for joint tenancy when the proposed joint tenant has lived at the property as their only or principal home for the 12 months prior to the tenant applying in writing for them to become a joint tenant.
- 4.6 The tenant, joint tenant or proposed joint tenant must have notified the Association in writing that the person that they wish to become a joint tenant is living in the property. The 12-month qualifying period does not start until the Association has been notified and given consent to the person who must be living in the property as their only or principal home.
- 4.7 The 12-month period applies to anyone wanting to be a joint tenant including the tenant's spouse, civil partner or co-habiting partner.
- 4.8 The proposed joint tenant must be approved by the Association, who will require a satisfactory report from any former landlord within the last 5 years.
- 4.9 The Association will accept notification in writing or by e-mail. We will not accept verbal notification. In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home, no further notification is required. Please note that if three or more people apply to be Joint Tenants and they are not related, the let must be dealt with as a House of Multiple Occupation (HMO). There is a separate process for HMOs and advice must be obtained from Senior Housing Officer before proceeding.

5. Succession of Scottish Secure Tenancy

- 5.1 Succession describes the process that takes place when a tenant (the principal tenant) dies the rights and responsibilities of their tenancy pass to a 'qualifying person' under the terms of Schedule 3 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.
- 5.2 On the death of a tenant the tenancy may pass to a qualified person as described in the Housing (Scotland) Act 2001 as amended in the Housing (Scotland) Act 2014 and in the Scottish Secure Tenancy Agreement. (Succession can only take place on the death of a tenant).
- 5.3 Consent to succeed a tenancy will only be given by the Association after consideration of the circumstances of qualified person(s). If there is no qualifying person or the qualifying person does not wish to succeed to the tenancy, the tenancy will be terminated.
- 5.4 It is the responsibility of the successor to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers of the death of the tenant and the date of their succession. The Association will provide advice and assistance with this.
- 5.5 The terms under which a Succession to tenancy can occur are set out in Section 7 of the Association's Scottish Secure Tenancy Agreement.

The terms are as follows:

Level One

- your spouse, civil partner or co-habitee if the house was their only or principal home on your death; OR
- a joint tenant, if the house was his or her only or principal home on your death; OR
- co-habitee must also have occupied the house as his/her only principal home for at least 12 months immediately before your death.

The 12 month period cannot begin unless we have been told that the individual is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home. You can give us notice of someone living with you before 1 November 2019 and that time will count towards the length of time they have been living at the property.

If more than one person qualified for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

Level Two

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of your family as long as:

- he or she is aged at least 16 at the date of death;
- The member of your family must have occupied the house as his/her only or principal home for at least 12 months immediately before your death to qualify to succeed to the tenancy. The 12 month period cannot begin unless we have been told that your family member is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

If more than one person qualified for the tenancy under Level two, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

Level Three

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only principal home at the date of death;
- he or she gave up another only or principal home before the death of the tenant;
- he or she is providing, or has provided care for the tenant or a member of the tenant's family.

The carer must have occupied the house as his/her only or principal home for at least 12 months immediately before your death to qualify to succeed to the tenancy. The 12 month period cannot begin unless we have been told that the carer is living in the property as their only or principal home. We must have been told that by you, a joint tenant or the carer who wishes to succeed to the tenancy.

- 5.6 If the house was designed or substantially adapted for a person with special needs, no person will qualify under level two or three above unless that person has special needs requiring the type of accommodation in the house. If a person would have qualified, but for this paragraph, we will make other suitable accommodation available.
- 5.7 If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months, Rent will be charged only for the actual period of occupation.

- 5.8 The tenancy can only be inherited twice under the provision noted above. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the above paragraphs, the tenancy will continue for up to 6 months after the last death. The tenancy will not be a Scottish Secure Tenancy for that period.

6. Adapted or Specially Designed Properties

- 6.1 If the house was designed or substantially adapted for a person with special needs, no person will qualify under level two or three above unless that person has special needs requiring the type of accommodation in the house. If a person would have qualified, but for this paragraph, the tenancy will be terminated and we will make other suitable accommodation available. Until suitable alternative accommodation is available, we will allow the remaining residents to remain in the property on a Short Scottish Secure Tenancy.

7. Eligibility Criteria

The Association will not withhold consent unreasonably, but may refuse consent of 00a tenancy on the grounds which include:-

- Where the existing tenant has not used the property as their only or principal home for the preceding 12-month period.
- Where the person that the tenant wishes to assign the tenancy to has not used the property as their only or principal home for the preceding 12-month period and/or the Association has not been informed in writing of their residency.
- A Notice of Proceedings for Recovery of Possession has been served on the tenant specifying one of the 'conduct' grounds set out in paragraphs 1-7 of Schedule 2 of the Housing (Scotland) Act e.g. rent arrears, anti-social behaviour.
- A Court Order for Recovery of Possession has been granted against the tenant.
- The Association has reason to believe that the tenant has received a payment in cash or in kind to affect the assignation.
- There is substantial damage to the property caused by the tenant, a member of the household or a visitor to the property.
- The tenancy would lead to overcrowding or under-occupation of the property in line with the Association's Allocation Policy.
- The property was designed or substantially adapted for a person with additional needs (e.g. for wheelchair use).
- The proposed has been involved in the perpetration of anti-social behaviour as confirmed by another agency e.g. Police Scotland or has had an ASBO granted against them or a member of their household within the last 3 years.
- The house is unsuitable for the prospective needs.

- Either party has given false or incomplete information about the application.
- There are current outstanding rent arrears or rechargeable repairs charges owed to the Association. This list, while comprehensive is not exhaustive and each application will be fully assessed by a member of the Housing Services Team before granting or refusing consent.

8. Appeal and Complaints

- 8.1 Any applicant unhappy about a decision relating to this policy must submit a written appeal to the Housing Services Officer within 28 days of receiving the decision.

The Housing Office will review the appeal and provide the applicant with the result of their decision in writing.

- 8.2 If the applicant is still dissatisfied, recourse can be sought through the Associations Complaints Policy.

Information about how to make a complaint is available from the Associations office or from our website. Stage 1 complaint will normally be reviewed by our Housing Services Team, while Stage 2 complaints matters will be dealt with by the Senior Housing Officer or Chief Executive Officer.

Our decision on a Stage 2 complaint represents the end of the Association's internal complaints procedure. If an applicant remains dissatisfied, they can contact the Scottish Public Ombudsman if they wish to have their complaints considered by an independent body. Details are available from our office or by contacting the Ombudsman direct at:

Scottish Public Services Ombudsman
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS, or Freepost SPSO

Telephone number 0131 225 5300, or Freephone 0800 377 7330

9. Equalities and Human Rights

The Association demonstrates its commitment to diversity and promoting equality by ensuring that this policy is applied in a manner that is fair to all sections of the community, with due regard to the protected characteristics identified under the Equality Act 2010.

10. Freedom of Information (FOI)

The Association is subject to FOI and all enquiries with respect to Assignment, Sub Let, Joint and Succession Policy will be handled strictly in line with FOI and confidentiality policies.

11. General Data Protection Regulations (GDPR)

The Organisation will treat personal data in line with our obligations under the current GDRP regulations and our own policy.

12. Review

This policy will be reviewed every 3 years and will be approved by the Operational Services Committee. The review will consider complaints received, legislative changes and feedback from customers.