

WISHAW AND DISTRICT HOUSING ASSOCIATION

SUB LETTING POLICY

As with all the Association's policies and procedures, this document, where required, can be translated into other community languages on request. For people with visual impairment, taped, large print or Braille versions can also be provided. Further information on the implementation of this policy is available at the office.

Wishaw and District Housing Association acknowledges that, under the Housing (Scotland) Act 2001, it is required to consult with residents on policies that directly affect the management of the properties. The consultation process on the Sub Letting Policy took place between January and February 2010.

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1.0 INTRODUCTION

Both the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy Agreement makes provision for tenants to sub-let their home to another person with the Association's permission.

Wishaw and District Housing Association understands that there may be occasions when circumstances require a tenant to leave their home for a period of time. During that period the tenant may wish to allow another person to sub-let the property on a temporary basis. However, the Association is also obliged to ensure that its properties are not used as a commercial venture or that the sub-letting process is not used as a means to by-pass the normal allocations procedures. The Association is also required to retain some measure of control over the houses that are occupied and to ensure that tenants adhere to their contractual obligations to use the house as their only or principal home.

The Sub-Letting Policy is intended to put in place a framework that allows tenants to utilise the right to sub-let whilst at the same time protecting the Association from potential abuse of the process. The policy is also intended to clarify what constitutes a sub-letting arrangement and the conditions that are required to be met by the tenant in applying to sub-let, the sub-tenant in entering into the sub-letting arrangement and the Association in permitting a tenant to sub-let.

2.0 LEGAL FRAMEWORK

In all aspects of processing an application to sub-let, the Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affects the process.

THE HOUSING (SCOTLAND) ACT 2001, Section 32 and Part 2 of Schedule 5 entitles a tenant to sub-let their home with the consent of the landlord. It also sets out the procedures for applying to sub-let and the grounds on which the Association can reasonably refuse the application.

Part 2 of Schedule 5 provides a right of appeal to the court by a tenant whose landlord refuses consent.

THE SCOTTISH SECURE TENANCY AGREEMENT, Part 4 obligates tenants to seek written permission from the Association to sub-let.

THE RACE RELATIONS ACT 1974, THE RACE RELATIONS (AMENDMENT) ACT 2000 AND THE RACE RELATIONS ACT 1976 (AMENDMENT) REGULATIONS 2003 make it unlawful for an Association to discriminate on the basis of colour, ethnic or national origin, race or nationality.

THE SEX DISCRIMINATION ACT 1975 makes it unlawful for the Association to discriminate on the basis of sex.

THE DISABILITY DISCRIMINATION ACT 1995 as amended and extended by THE DISABILITY DISCRIMINATION ACT 2005 makes it unlawful for the Association to discriminate against disabled people by treating them less favourably than someone else.

THE DATA PROTECTION ACT 1998 imposes obligations on the Association not to disclose personal information held on computer or certain types of non-computerised data.

ACCESS TO PERSONAL FILES ACT 1987 gives individuals the right to have access to personal information about themselves in files held by the Association.

THE CIVIL PARTNERSHIP ACT 1999 obliges the Association to ensure that civil partners are given the same rights as married couples.

3.0 AIMS AND OBJECTIVES

The primary aim of the Sub-Letting Policy is to put a structure in place that ensures that people do not move in and out of the Association's properties in an illegal or uncontrolled way. The policy is also intended to provide guidance to staff on implementing the correct procedures and to tenants on the requirements placed on them when applying to sub-let their home.

Arising from these overall aims, the key objectives of the Sub-Letting Policy include;

- Ensuring that the Association, at all times, complies with the law and operates in accordance with good practice.
- Ensuring that tenants meet all their statutory obligations relating to sub-letting.
- Recognising and protecting the rights of the tenant and the sub-tenant.
- Ensuring that all applications to sublet are treated in a fair and equitable manner.
- Ensuring that the procedures for sub-letting are not used as a means of circumventing the Association's allocations procedures.
- Protecting the sub-tenant from being treated in an unfair manner in terms of the rent charged and the conditions of their sub-letting agreement.
- Ensuring that the sub-tenant is fully aware of the expectations of the Association in terms of their conduct and that the tenant is aware of their responsibilities should the sub-tenant fail to conduct themselves in an acceptable manner.
- Allowing the Association to keep accurate records of who is residing in its properties.
- Ensuring that a tenancy with the Association is not used as a commercial venture.
- Ensuring that the Association's property is not allowed to become illegally overcrowded.

4.0 DEFINITION OF SUB-LETTING

For the purposes of this policy, a sub-let will be defined as when a tenant temporarily leaves their home and nominates another person to live in their home for a period of time until the tenant's return. There will normally be a formal financial arrangement between the tenant and the sub-tenant.

Where the Association approves a sub-let, the legal relationship between the tenant and the Association does not alter. The tenancy will remain in the name of the tenant who remains responsible for the property and the payment of rent.

5.0 APPLYING TO SUB-LET

Under the terms of the Scottish Secure Tenancy Agreement, a tenant must apply to the Association in writing, giving;

- Details of the proposed sub-tenant.
- Details of any payments (such as rent to be charged, deposits, use of furniture etc) that the tenant proposes charging the sub-tenant.
- Details of any terms and conditions of the sub-letting agreement.
- A copy of the proposed agreement.
- The start date of the sub-let.
- The tenant's intended date of return to the property.
- A forwarding address and contact number for the tenant.

Where appropriate or requested by the applicant, assistance will be given to complete the written application and/or draw up a sub-letting agreement.

The application must be made by the tenant and, in the case of a joint tenancy, agreed by all tenants in the property. Where applicable, the spouse/civil partner or co-habitee will be required to confirm in writing that they are agreeable to the house being temporarily sub-let. Where the spouse/civil partner is no longer residing in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner stating that s/he does not want to invoke their occupancy rights to stay in the property.

6.0 CONDITIONS FOR GRANTING PERMISSION TO SUB-LET

Under the terms of the Housing (Scotland) Act 2001, permission to sub-let is at the discretion of the landlord. However, the Act also states that permission cannot be unreasonably withheld.

In considering an application to sub-let, the Association must be satisfied that;

- The proposed charges to the sub-tenant and, if applicable, the deposit, is reasonable.
- The terms and conditions of the sub-letting agreement are acceptable.
- The proposed sub-tenant has no history of anti-social behaviour with the Association.
- The property will not be overcrowded.
- In the case of a joint tenancy, that all tenants are agreeable to the application to sub-let.
- All parties are fully aware of their obligations and responsibilities.
- That the tenant intends to return to the property within a stated period of time and to resume using the house as their only or principal home.

In considering the reasonableness of the proposed charge to the sub-tenant, the Association will take into consideration;

- The size of the property and the current rent being charged by the Association.
- The use of furnishings and facilities such as furniture, white goods, audio and visual equipment etc that are being made available for the sub-tenant's use.
- Arrangements for the payment of utilities such as gas, electricity, phone etc.
- Arrangements for the payment of council tax.

The assessment of the reasonableness of the proposed charge and the consent or refusal of the application must be approved by the Housing Operations Manager.

7.0 GROUNDS FOR REFUSING CONSENT

7.1 Household Size

Consent for a tenant to sub-let will not be given where it would result in the property being overcrowded and would not normally be given if the house is going to be under-occupied. However, in the case of under-occupation each case will be considered on its own merit, taking into account the best approach for the tenant, the Association and the security of the property.

The size definition defined in the Association's Allocations Policy will apply when assessing the issue of overcrowding and under-occupancy.

7.2 Property Condition

Permission to sub-let will not be granted where the property is found to be in an unacceptable condition due to tenant damage or neglect. The tenant will, however, be given the opportunity to make good any damage at their own expense and have their application reconsidered.

7.3 Legal Action

7.3.1 *Notice of Proceedings for Recovery of Possession*

Where the Association has served a Notice of Proceedings for Recovery of Possession against the tenant specifying one of the grounds 1 to 7 in part 1 of schedule 2, permission to sub-let will not be given.

7.3.2 *Decree for Recovery*

Permission to sub-let will not be given where a court order for the recovery of possession has been made against the tenant.

7.4 Payments

The Association will not consent to a sub-let where the tenant has received a payment, other than an acceptable deposit, in return for sub-letting the property.

7.5 Proposed Works to the Property

Permission to sub-let may be withheld where the Association plans to carry out works to the property.

7.6 General

Subsection (3) of Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 gives examples of what may be deemed as reasonable grounds for landlords to withhold consent to sub-let. However these grounds can be modified by Scottish Ministers through regulations.

The grounds for withholding permission given above are not, therefore, exhaustive and may be changed to reflect guidance from the Scottish Government and other bodies such as the Scottish Housing Regulator and SFHA.

The Association may also refuse to give permission where it believes it has other reasonable grounds to do so.

8.0 NOTIFICATION OF DECISION

The Association must notify the tenant of its decision regarding the sub-let within one month of the completed application form being received at the office. Where written notification has not been provided within one month it will be taken that consent to the application has been given.

Where permission for the sub-let is not being given, the Association must give the grounds for refusal in writing to the tenant within one month of the completed application being submitted.

9.0 RESPONSIBILITY OF TENANT

An approved sub-let does not alter the relationship between the tenant and the Association and the tenant remains responsible for ensuring that the rent is paid and that the terms of the tenancy agreement are adhered to.

The tenant will be held responsible for the conduct of their sub-tenant and any legal action arising from the unacceptable behaviour of the sub-tenant will be taken against the tenant.

10.0 RIGHTS OF THE SUB-TENANT

The sub-tenant has a legal right to remain in the house only so long as the Association gives its permission. If the Association withdraws its consent for the sub-let on the grounds that a condition of the consent has been broken, the sub-tenant will be required to leave the property. The tenant will be obliged to return to reside in the house as their only or principal home.

11.0 CONDITIONS OF CONSENT

Where the Association gives its permission to the tenant to sub-let their home, consent is given on the following conditions;

- The Association's approval is sought for any changes to the charges made to the sub-tenant or to the terms and conditions of the sub-letting agreement.
- Permission is only given for the sub-tenants and members of their family named on the application form.
- That all terms of the tenant's tenancy agreement are adhered to, including the payment of rent.
- That any breach of the tenancy agreement will be deemed as breaking a condition of consent and permission for the sub-let will be withdrawn.
- Permission for the sub-let is given for a maximum of 6 months. Application to renew the consent may be made by the tenant no later than 1 month before the end of the six month period.
- The tenant will be held responsible for the conduct of the sub-tenant and any legal action arising from the unacceptable behaviour of the sub-tenant will be taken against the tenant.
- The sub-tenant has no right of succession upon the tenant's death.
- That the tenant returns to the live in the house at the end of the sub-let period.
- That the tenant and the sub-tenant are responsible for notifying all necessary agencies and statutory bodies e.g. Council Tax, Benefits Agency etc.
- That the tenant remains the tenant of the Association as a Scottish Secure Tenant. If the tenant terminates their tenancy, permission for the sub-let will automatically be withdrawn.

12.0 THE RIGHT OF APPEAL

Any party directly affected by the Association's decision relating to an application to sub-let has the right to appeal any decision made by the Association in relation to that application. They may also make a formal complaint if they feel aggrieved at the treatment they have received during the process of making the application. A copy of the Complaints and Appeals Procedures will be made available at the office.

Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 gives tenants that are aggrieved by the Association's decision the right to apply to the sheriff court to reconsider the decision. Where the court finds that Association's decision to be unreasonable, the court must order the Association to consent to the sub-let.

13.0 DELEGATION OF AUTHORITY

The practical implementation of the policy and the day-to-day operation of the procedures for assessing an application to sub-let will be undertaken by members of the Association's Tenancy Services Department. The Housing Operations Manager will have delegated authority to grant or withhold consent for a sub-let within the statutory timescale.

Where an application does not meet the normal conditions for approval but it is felt that to refuse would be extremely harsh or detrimental to the tenant or the Association, the Assistant Chief Executive will consider approving the application.

14.0 PROVISION OF INFORMATION

It is the responsibility of the person(s) applying to sub-let to provide all the necessary information to support their application. Any costs incurred in obtaining this information will be the applicant's responsibility.

15.0 CONFIDENTIALITY

All personal information provided to the Association during the course of processing an application to sub-let will be treated with the strictest of confidence. .

Personal details provided in the course of processing the application will only be disclosed to the Association's staff on a 'need to know' basis as determined by the Housing Operations Manager and in line with sub-letting procedures.

No personal details will be divulged to any body or person other than those mandated by the tenant or allowed under the Association's Data Protection Policy or the Data Protection Act 1998.

16.0 ACCESS TO INFORMATION

The Association maintains computerised records and in line with the Data Protection and Access to Information legislation the Association will therefore respond to written requests by a tenant for access to any records pertaining to their application to sub-let. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities no charge will be made in respect of charges incurred by the Association in providing information in alternative formats such as large print, Braille and languages other than English.

17.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal opportunities and will endeavour to ensure that all functions within the sub-letting process are carried out in a fair and undiscriminating manner in line with both the Sub-Letting Policy and the Equal Opportunities Policy.

In particular the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status, social background or medical conditions (including those with AIDS or are HIV positive).

To ensure that the Association's sub-letting process is accessible to all applicable residents, translation and interpretation services will be provided where required and, where appropriate, information will be made available in other formats including tape, Braille and large print. These services will be provided in line with the Association's Translating & Interpreting Policy.

18.0 INFORMATION & ADVICE

A summary of the Association's Sub-Letting Policy will be made available on request and, where necessary, will be made available in other medium such as tape or in Braille or will be translated into other languages as required.

19.0 REVIEW OF THE POLICY

The full Sub-Letting Policy will be reviewed at least every three years. However elements of the policy may be reviewed within that timescale if required.

20.0 CONSULTATION

The association will seek to carry out a consultation exercise prior to final approval being given for any proposed review and/or amendment to the Association's Sub-Letting Policy and, where appropriate will seek the comments and views from interested and affected parties. All comments and views formally expressed and notified to the Association as part of the consultation exercise will be considered prior to final implementation.

However, in order to allow the Association to provide as high a standard of service as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending final approval.

Document History

First Adopted by Management Committee	-	7 December 1989
First Revision by Management Committee	-	22 June 1999
Second Revision by Board of Management	-	1 July 2003
Third Revision by Board of Directors	-	12 September 2006
Fourth Revision by the Assistant Chief Executive	-	26 January 2010

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