

WISHAW AND DISTRICT HOUSING ASSOCIATION

ASSIGNATION 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 Assignations Policy took place between January and February 2010.

CONTENTS

	<u>PAGE NO</u>
1.0 INTRODUCTION	1
2.0 LEGAL FRAMEWORK	1
3.0 AIMS AND OBJECTIVES	2
4.0 APPLYING FOR A TRANSFER OF TENANCY.....	3
4.1 Written Application by the Tenant	3
4.2 Abandonment by the Tenant	3
4.3 Court Order	4
5.0 CONDITIONS FOR A TRANSFER.....	4
6.0 PROVISION OF INFORMATION	5
7.0 GROUND FOR WITHHOLDING PERMISSION FOR TRANSFER	5
7.1 Residency.....	5
7.2 Household Size.....	5
7.3 Monies owed to the Association	6
7.4 Property Condition	6
7.5 Legal Action	6
7.5.1 Notice of Recovery of Possession	6
7.5.2 Order for Recovery	6
7.6 Payments.....	6
7.7 Proposed Works to the Property.....	6
7.8 General	6
8.0 NOTIFICATION OF THE DECISION.....	7
9.0 METHOD OF TRANSFER.....	7
10.0 SCHEDULE 7 CONSENT	7
11.0 DELEGATION OF RESPONSIBILITY	8
12.0 CONFIDENTIALITY	8
13.0 ACCESS TO INFORMATION	8
14.0 EQUAL OPPORTUNITIES.....	9

Contd/...

15.0	THE RIGHT OF APPEAL.....	9
16.0	INFORMATION AND ADVICE.....	9
17.0	POLICY REVIEW.....	10
18.0	CONSULTATION.....	10

1.0 INTRODUCTION

Both the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy Agreement provides for tenants to assign their tenancy to another person, with the Association's permission.

Wishaw and District Housing Association accepts that there maybe occasions when a tenant no longer wishes to be the legal tenant of the property and wants to hand the tenancy over to another person. The Association recognises that there are a variety of circumstances in which a tenant will voluntarily choose to put the tenancy in the name of another member of the household. There may also be occasions when it is the other member of the household that is seeking to have the tenancy put in their name.

The Association also recognises that the conditions of an assignation are not always the most suitable means of putting a tenancy into the name of another person. The Assignation Policy, therefore, will apply to all requests from both tenants and other entitled persons that wish the tenancy of a property to be altered in favour of another person. For the purposes of the policy the method of altering the tenancy will be referred to as a Transfer of Tenancy and will cover assignations and other transfer processes.

2.0 LEGAL FRAMEWORK

In all aspects of the process of transferring a tenancy, 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 entitle a tenant to assign their house with the consent of the landlord. It also sets out both the conditions for applying to assign the tenancy and the grounds on which the Association may reasonably refuse the application.

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

THE SCOTTISH SECURE TENANCY AGREEMENT, Part 4 obligates tenants to seek written permission from the Association to assign the tenancy.

THE HOUSING (SCOTLAND) ACT 2001, Section 63, Schedule 7 Part 1 allows Housing Associations to grant a tenancy, a transfer of tenancy or a mutual exchange to an employee, former employee, committee member or former committee member only providing that the applicant fully meets the Association's criteria and has no involvement in, or influence over, the process by which the Association grants approval.

THE MATRIMONIAL HOMES (FAMILY PROTECTION) ACT 1981, Section 18 provides that a spouse has the right to remain in the property where the tenant wishes to end the tenancy. Co-habitees of the tenant are required to apply to the court to grant them occupancy rights under the Act.

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 Assignment Policy is to put a structure in place that ensures that the tenancy of properties is not passed to another person 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.

Arising from these overall aims, the key objectives of the Assignment 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 the transfer of their tenancy.
- Recognising and protecting the legal rights of other members of the household.
- Ensuring that all applications for a transfer of tenancy are treated in a fair and equitable manner.
- Ensuring that the Association's properties are not passed from one person to another as a means of circumventing the Association's Allocations Policy.
- Protecting the tenants from being coerced or pressurised by another person into transferring their tenancy.
- Allowing the Association to keep accurate records of the tenants and households in its properties.
- Ensuring that the Transfer of Tenancy process is open and accessible to all tenants of the Association.
- Ensuring that the legal tenant of the property is actually living in the property and fulfilling their obligation to use the house as their only or principal home.

4.0 APPLYING FOR A TRANSFER OF TENANCY

4.1 Written Application by the Tenant

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

- Details of the proposed change including who the tenancy is being transferred to.
- Details of any payments (including deposits) the tenant proposes charging in relation to the transfer of the tenancy.
- The date from which the transfer of tenancy is to take effect.

Where appropriate, or requested by the applicant, assistance will be given to complete the written application.

Where applicable and where the proposed 'new' tenant is not the spouse, civil partner or co-habitee of the applicant, the spouse, civil partner or co-habitee will be required to confirm in writing that they do not wish to invoke their Occupancy Rights under the Matrimonial Homes Act. Where the spouse or civil partner is no longer living in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner that s/he does not wish to invoke their occupancy rights.

4.2 Abandonment by the Tenant

Where the tenant of the house has left the property without legally transferring the tenancy to another person, an entitled member of the household may apply to the Association to have the tenancy transferred into their name.

Applications must be made in writing giving:

- The date the tenant left the property.
- Confirmation that the house is no longer the only or principal home of the tenant.
- A contact address for the tenant.
- Details of the remaining household.

The Association will give consideration to treating the tenant as having abandoned the property and will instigate the Abandoned House Policy and Procedures.

Consideration to transferring the tenancy to another member of the household will only be made once the abandonment process has been completed and the Association is satisfied that the tenant no longer resides in the house and does not intend to return to the property.

Where applicable and where the applicant is not the spouse, civil partner or co-habitee of the tenant, the spouse, civil partner or co-habitee will be required to confirm in writing that they do not wish to invoke their Occupancy Rights under the Matrimonial Homes Act. Where the spouse or civil partner is no longer living in the property, the applicant will be required to take all reasonable steps to get a written declaration from their ex-partner that s/he does not wish to invoke their occupancy rights.

4.3 Court Order

Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 a spouse, civil partner or co-habitee may apply to the courts to have the tenancy of the house transferred into their name. Other entitled persons may also apply to the courts if they believe a decision made by the Association preventing them from getting the tenancy of a property out into their name is unlawful or unreasonable.

The Association may also apply to the courts to have the tenancy transferred to a spouse, civil partner or co-habitee by means of serving a notice of recovery on ground 15 and ensuring that suitable alternative accommodation is made available for the tenant.

Where the court agrees to the transfer of the tenancy, the Association must comply with the court order.

5.0 CONDITIONS FOR A TRANSFER

Under the terms of the Housing (Scotland) Act 2001, transfers of tenancy are at the discretion of the landlord. However the Act also states that permission to transfer the tenancy cannot be unreasonably withheld.

An application to transfer the tenancy will only be considered when the proposed tenant can clearly demonstrate that the house has continuously been their only or principal home for at least the six months prior to the application being made. To satisfy this requirement, the proposed tenant must have:

- Registered with, and been accepted by, the Association as a member of the household
AND
- Declared as part of the household on Housing Benefit claims.
- Declared as part of the household with the Council Tax Department.
- Claiming any benefits from that address
OR
- Able to provide evidence of residency.

When considering an application for a transfer of tenancy, the Association must be satisfied that:

- Neither party is being unduly coerced or pressurised.
- The Assignment procedures are not being used as a means of circumventing the Association's Allocations Policy.
- There are genuine reasons for the transfer.
- All parties fully understand and accept all the implications and responsibilities of transferring the tenancy.

6.0 PROVISION OF INFORMATION

It is the responsibility of the person(s) applying for an assignment to provide all the necessary evidence required to support their application. Any costs incurred in obtaining this evidence will be the applicant's responsibility.

7.0 GROUNDS FOR WITHHOLDING PERMISSION FOR TRANSFER

7.1 Residency

The Association will not permit a tenancy to be transferred to any person who cannot prove that the house has been their only or principal home for the six months prior to the transfer application being made.

Under normal circumstances, a transfer of tenancy will only be considered where the current tenant has left, or is intending to leave, the property. However, consideration will also be given if the applicant can show other good cause for transferring the tenancy (e.g. on the grounds of ill-health).

7.2 Household Size

Consent for a transfer of tenancy will not be given where the transfer would result in the property being overcrowded. Where the transfer would result in the house being underoccupied by more than one bedroom, the Association will seek to offer the household more suitably sized accommodation.

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

7.3 Monies Owed to the Association

A transfer of tenancy will not be approved where the existing tenant owes the Association monies relating to the tenancy such as rent arrears or rechargeable repairs. However, the tenant will be given the opportunity to clear any outstanding debt and have the application to transfer the tenancy reconsidered.

7.4 Property Condition

Permission for a transfer of tenancy 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.

7.5 Legal Action

7.5.1 *Notice of Recovery of Possession*

Where the Association has served a Notice of Recovery of Possession against the tenant specifying one of the grounds 1 to 7 in Part 1 of Schedule 2, permission to transfer the tenancy will not normally be given. Granting consent will only be considered where the Association believes that the transfer of the tenancy will be in the best interests of the Association, the tenant's household and/or the neighbours.

7.5.2 *Order for Recovery*

Permission for a transfer of tenancy will not be given where a Decree for the recovery of possession has been made against the tenant by the court.

7.6 Payments

The Association will not permit a tenancy to be transferred where the tenant has received a payment in return for transferring the tenancy.

7.7 Proposed works to the property

Permission for the transfer may be withheld where the Association plans to carry out works to the property.

7.8 General

Subsection (30) 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 for a transfer of the tenancy. 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 Executive and other bodies such as Communities Scotland and SFHA.

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

8.0 NOTIFICATION OF THE DECISION

The Association must notify the applicant of its decision regarding the transfer of the tenancy within one month of the completed application 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 and the transfer will be deemed to have occurred.

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

9.0 METHOD OF TRANSFER

Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 entitles a tenant to assign their tenancy to another person with the consent of the landlord. When assigning a tenancy, the tenant conveys all their rights and obligations under the tenancy agreement to another person, including the responsibility for any default period referable to the period of the tenancy, including rent arrears and rechargeable repairs.

With an assignation no new tenancy agreement is signed and the tenancy is transferred by means of an assignation documentation signed by all the parties involved.

However, as noted previously, the Association recognises that the conditions of an assignation are not always the most suitable means for transferring a tenancy. An approved transfer will, therefore, be processed as either an assignation or by means of ending the existing tenancy and the incoming tenant signing a new tenancy agreement.

The method of transfer will be decided on in full consultation with both parties and the Housing Operations Manager.

10.0 SCHEDULE 7 CONSENT

In order to ensure that the Association is able to comply with the requirements of Schedule 7 of the Housing (Scotland) Act 2001, all applicants for an assignation will be asked to declare any relative status and/or relationship that may bring their application within the scope of the Schedule 7 provisions. Specifically, applicants will be asked to declare any direct relationship with an employee or former employee of the Association and/or current Board member or former Board member.

Where such a relationship is declared, no consent for the transfer will be given without the express approval of the Board, the Policy and Resources Committee or the Tenancy Services Committee. All approved assignments will be recorded in the Association's Benefits Register.

11.0 DELEGATION OF RESPONSIBILITY

The practical implementation of the policy and the day-to-day operation of the procedures for transferring a tenancy will be undertaken by members of the Association's Tenancy Services Department. The Housing Operations Manager will have delegated authority to give or withhold consent for a transfer of tenancy within the statutory timescale.

Where an application does not meet the normal conditions for approval but it is felt that to refuse permission would be extremely harsh or detrimental to the tenant, the household or the Association, the application will normally be referred for decision to the Tenancy Services Committee. However, where the cycle of committee meetings would mean that the Association would not be able to meet the statutory timescales, the application will be referred to the Chief Executive, the Chairman of the Association and the Convenor of the Tenancy Services Committee.

12.0 CONFIDENTIALITY

All personal information provided to the Association during the course of processing an application to transfer the tenancy will be treated with the strictest confidence. Any applications referred to the Tenancy Services Committee or the Chief Executive, Chairman and Convenor of the Tenancy Services Committee will be made anonymously.

Personal details provided in the course of processing the assignment application will only be disclosed to the Association's staff on a 'need to know' basis as determined by the Housing Services Manager and in line with the Assignations Procedures.

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

13.0 ACCESS TO INFORMATION

The Association maintains computerised tenancy records. In line with the Data Protection and Access to Information legislation the Association will therefore respond to written requests by a tenant or applicant for access to any records stored pertaining to their application. 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 Policy 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.

14.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal Opportunities and will endeavour to ensure that all functions with the assignments process are carried out in a fair and undiscriminating manner in line with both the Assignations 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 or social background and medical conditions (including those with AIDS or are HIV positive).

To ensure that the Association's assignments 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.

15.0 THE RIGHT OF APPEAL

Any party directly affected by the Association's decision on an application to transfer a tenancy 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 from the staff 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 also gives tenants that are aggrieved by the Association's decision the right to apply to the sheriff court to reconsider that decision. Where the court finds the Association's decision to be unreasonable, the court must order the Association to consent to the transfer of tenancy.

16.0 INFORMATION AND ADVICE

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

17.0 POLICY REVIEW

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

18.0 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 Assignations Policy and, where appropriate will seek 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 services as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending further approval.

Document History

First Adopted by Management Committee	-	7 December 1989
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Written by EL