



***A GUIDE TO ASSIGNATION AND
TRANSFER OF TENANCY***

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A guide to transferring a tenancy

What is an Assignment/Transfer of tenancy

Assignment is when a tenant no longer wishes to be the legal tenant of the property and wants to hand the tenancy over to another person

When assigning a tenancy, the tenant conveys all their rights and obligations under the tenancy agreement to another person including the responsibility of any rent arrears and re-chargeable repairs.

Only a member of the household can assign to the tenancy and consent would be given under certain conditions which are laid out in the Housing (Scotland) Act 2001 and in the Scottish Secure Tenancy Agreement.

There are certain circumstances when an Assignment would not be appropriate, in this instance we would consider it as a "transfer of tenancy".

A transfer of tenancy is when the tenancy is transferred from the existing tenant to another qualifying person.

Who would qualify for an Assignment/Transfer of Tenancy

The Housing (Scotland) Act 2001 clarifies who a tenancy can be assigned/transferred to and this will be at the discretion of the Association.

The house must have been the assignee's only or principal home throughout the period of 6 months before the date of the application.

To satisfy this requirement, the proposed tenant must meet the criteria as laid out under section "Conditions for a transfer of tenancy".

What should I do if I want to assign/transfer my tenancy?

Under the terms of the Scottish Secure Tenancy Agreement tenants must apply to the Association in writing.

An application form can be obtained from the Association and will be assessed in accordance with our policy.

Where the proposed “new” tenant is not the spouse or co-habitee of the applicant, the spouse 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 is no longer living in the property, the tenant will be required to take all reasonable steps from their ex-partner that she/he does not wish to invoke their occupancy rights.

Matrimonial Homes (Family Protection) (Scotland) Act 1981

Under this Act a spouse 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.

Conditions for a transfer of tenancy

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 accepted by, the Association as a member of the household AND
- Declared as part of the household with the appropriate authorities ie Council Tax etc and ability to provide evidence of residency.

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 Allocation Policy
- There are genuine reasons for the transfer
- All parties fully understand and accept all the implications and responsibilities of transferring the tenancy.

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.

A change of tenancy application form must be completed and submitted to the Association.

The Association may instigate the Abandoned House Policy and Procedures.

However, consideration to transferring the tenancy 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.

Notification of Decision

The Association will notify you of their decision regarding the transfer of tenancy within one month of the completed application being received at the office.

If your application is refused grounds for refusal will be stated on the decision letter.

What happens if my application is refused?

The Association may refuse to give permission where it believes it has reasonable grounds to do so, examples are:

- length of residency;
- household size;
- monies owed to the Association;
- property condition;
- legal action ie Notice of Recovery of Possession served by Association or Court Order.

The grounds listed are not exhaustive and may be changed to reflect guidance from the Scottish Executive, and other bodies such as Communities Scotland.

Right of Appeal

You have the right to appeal the decision made by the Association in relation to your application.

Details on how to appeal a decision is available from the Association's 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 appeal to the Sheriff Court to re-consider that decision.

A copy of the Association's Assignment Policy is also available from the office on request.