

TO:	Housing Services Sub-Committee
PREPARED BY:	Chris Chalk (DH&CI)
SUBJECT:	TENANCY CHANGES POLICY
DATE OF MEETING:	25 June 2024
APPROVED BY:	Paul Martin (CEO)

# Tenancy Changes Policy

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## **1. INTRODUCTION**

The purpose of this policy is to set out a framework for the approval and management of requests for succession, assignation, joint to sole, sole to joint tenancy changes.

Milnbank Housing Association is committed to providing an effective and efficient tenancy management service that reflects best practice, complies with legislation and protects the rights of our tenants.

The aim of this policy is to:

- Ensure that tenancy changes are managed effectively and consistently;
- Ensure that we fully comply with our obligations as a landlord
- Ensure that we adhere to all relevant legal and good practice guidelines
- Provide a service with is fair, equitable and transparent

The Association will seek to ensure that tenancy changes are applied in a manner that is fair to all sections of the community regardless of nationality, ethnic origin, marital status, age, gender, disability, or any other characteristic

## **2. ROLES AND RESPONSIBILITIES**

The Director of Housing and Community Initiatives is responsible for ensuring the adoption of the adherence to this policy and its associated procedures relevant to their operation

The Director of Housing and Community Initiatives

- Ensuring that this policy is implemented by their staff
- Monitoring systems and practices on the ground level and ensuring that there is a fair and consistent approach

## **3. LEGISLATION, REFERENCES AND SOURCES**

The following legislation, references and sources are relevant to the development and delivery of this policy and associated procedure

- Equality Act 2010; consolidates existing legislation and makes it unlawful to discriminate in the provision of services based on protected characteristics
- Freedom of Information (Scotland) Act 2002
- General Data Protection Regulation
- Housing (Scotland) 1987 defines overcrowding and sets out the powers and duties of landlords to prevent overcrowding
- The Housing Scotland Act 2001 Section 33 and schedule 5 part 2 set out legal framework for tenancy changes relevant to this policy
- Housing (Scotland) Act 2014 includes amendments to the Housing (Scotland) 2001 Act in relation to assignations, successions and joint tenancies introducing new residency and notification requirements
- The Scottish Government Scottish Secure and Short Scottish Secure Tenancy Guidance further explains the legal framework set out in the Housing (Scotland) 2001 Act and the Housing (Scotland) Act 2014

## **4. IMPACT ON DIVERSITY**

This policy applies to the Tenancy Changes in Milnbank Housing Association as outlined above.

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

## **5. TENANT CONSULTATION**

There was no need to consult on these changes as it was to comply with legislation and bring our policy in line with legislation

## **6. MONITORING AND REVIEW**

Policy will be monitored by the Housing Services Sub-Committee to ensure it complies with legislation and reflects best practice. This will be reviewed every 3 years unless otherwise required.

This policy will be reviewed in accordance with the policy review programme agreed by the Management Committee

## **7. DATA PROTECTION**

MHA controls the personal information that we collect, this means that we are legally responsible for how we collect, hold and use personal information. It also means that we are required to comply with the General Data Protection Regulations (GDPR) when collecting, holding and using personal information. See our Privacy Policy for more information.

## **8. DEFINITION OF TERMS USED**

### **Succession**

Succession is the term used when a tenant dies, and the tenancy passes to another household member. The new tenant takes on all the rights and responsibilities of the tenancy.

#### *Level of priority for succession*

When a tenant dies, the tenancy can be taken by a qualified member of the household. This could be a spouse, civil partner, cohabitee, family member, carer or joint tenant

Any cohabitee, family member or carer applying to succeed the tenancy must have lived in the property as their only and principal home for at least 12 months immediately

The 12 month period cannot begin unless the Association has been notified of the individual living in the property as their only or principal home. The Association must have been notified by the (deceased) tenant, a joint tenant or the person who wishes to succeed the tenancy.

The length of time the proposed assignee has been living in the property starts from the date that the Association are notified that the person living in the property as their only and principal home.

For any spouse, civil partner or joint tenant applying to succeed the tenancy, they must have been residing in the property as their only or principal home at the time of the tenant's death

Verbal notification alone will not be accepted; tenants will have to add a household member in writing before the Association recognises and records a new household member.

Priority for the tenancy will be determined in accordance with the succession rights set out in the Housing (Scotland) Act 2001 and Housing (Scotland) Act 2014 as set out below. In all cases the property of the deceased tenant must have been the only or principal home of the qualifying person. For each separate round of succession there are 3 levels of priority.

### ***First priority***

First Priority goes to:

- The surviving spouse or civil partner of the tenant providing the property was their only or principal home at the time of the tenant's death
- The tenant's cohabitee or either sex, providing the property has been their only or principal home for at least 12 months before the tenant's death and the Association were notified of this before the 12 month period began
- The surviving joint tenant, providing the property was their only or principal home at the time of the tenant's death

### ***Second priority***

If nobody qualifies or chooses to succeed from the first priority group, then second priority goes to other members of the tenant's family as long as:

- They are aged at least 16 years at the day of the tenant's death; and
- The property was their only or principal home for at least 12 months before the tenant's death and the Association were notified of this before the 12 month period began

### ***Third priority***

If nobody in any of the above categories qualifies or chooses to succeed, then third priority goes to carers as long as:

- They are aged at least 16 years at the day of the tenant's death; and
- The property was their only or principal home for at least 12 months before the tenant's death and the Association were notified of this before the 12 month period began

There is no specific definition of carer. The principal test is not the level of care provided but that the individual has given up their only or principal home for the purpose of caring. The intention is to ensure that individuals who give up their homes to care for a tenant, or a member of the tenants family are not left homeless by the death of the tenant or other qualifying persons.

### **Rounds of Succession**

There are two rounds of succession, which means that that the tenancy can only be inherited twice under the statutory succession framework described above.

Normally the death of a tenant who had succeeded under a second round of succession would lead to the termination of the tenancy. Where a tenant dies and both rounds of succession have passed, the Housing Services Manager may allow existing household members to succeed to the tenancy depending on their needs and circumstances

In the case of joint tenancies, tenancies are not terminated on the death of one of the joint tenants if the remaining tenant or tenants continue to live in the property. This does count as a round of succession.

### **Adapted properties**

A person can only inherit a tenancy over a property that has been designed or adapted to suit a person's special needs if they are a qualified person and meet the additional requirement of having special needs as such they require accommodation as the kind provided by the property.

Any person who would otherwise be qualified to succeed has a right to alternative suitable accommodation. The Housing (Scotland) Act 2001 defines the factors the Association need to have regard to in making an offer of accommodation. The relevant factors are:

- Its proximity to the place of work (including attendance at an educational institution) of the tenant and of members of the tenant's family, compared with the tenant's existing house
- The extent of the accommodation required by the tenant and the tenant's family
- The character of the accommodation offered compared to the tenant's existing tenancy whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant's family; and
- Any special needs of the tenant or the tenant's family

### **More than one qualifying person**

Where there is more than one qualified person at any level in the hierarchy of succession right e.g. if there was both a spouse and a joint tenant with first priority, the it is open to the qualifying persons to come to an agreement about which one of them should succeed. If no agreement is reached within 4 weeks of the death of the tenant, or of the date we notified the qualifying persons of their right to succeed to the tenancy, then the Housing Services Manager or person of at least equal seniority will decide who is to succeed.

### **Minute of Variation**

Any tenant succeeding to a tenancy must accept the terms of the tenancy by signing a minute of variation and should be given a copy of the tenancy agreement.

### **Arrears and other obligations**

Following a succession, the successor does not inherit rent arrears or any other outstanding tenancy related obligations of the original tenant unless the new tenant agrees to take them on.

### **Rent account credits**

How any rent paid by the deceased or their estate is dealt with will depend on individual circumstances. The deceased may have been in receipt of benefits and in many cases the new tenant will be the person succeeding to the deceased's estate as well as the tenancy. Where a tenant dies and there is no successor there may be a small element of pre-paid rent outstanding. That is a debt owed to the tenant's estate but we will normally retain any prepaid rent until a property is cleared and the keys are handed back.

### **Rent account arrears**

When a tenant dies and there is no successor, the executor will be pursued for any arrears the tenant has accrued. Where the executor states there are no funds to cover this, a declaration to this effect must be provided by the executor and the arrears will be written off. Where there is no executor the arrears will be written off.

A period of two weeks will normally be allowed for the property to be cleared. Where the time taken is longer than 2 weeks we may pursue the estate for any arrears accrued. The Housing Services Manager has the discretion to extend the period allowed to clear the property by a maximum of a further two weeks, provided the previous tenant's estate will cover the rent loss. The deceased family have the option to pay additional rent to cover any additional period if an agreement is reached with the family and the Association.

Any decision on whether to pursue the executor for arrears will be at the discretion of the Housing Services Manager.

### **Assignment**

Assignment is the term used when a tenancy passes from one tenant to another. The tenancy itself continues on the same basis i.e. the tenancy does not end and neither does a new tenancy start. It is the identity of the tenant that changes. The new tenant takes on all the rights and responsibilities of the tenancy. Requests for assignment will normally be received when the existing tenant wishes to move away and there are household members who do not wish to move with them. Requests for assignments may also result from relationship breakdowns to avoid tenancy matters having to be resolved via the courts.

The proposed assignee and the current tenant(s) must have resided in the property as their only or principal home for 12 months before the date a written application for assignment is submitted.

In addition the proposed assignee must have been living in the property as their only or principal home for at least 12 months before the date the written application is submitted and the tenant, joint tenant or the proposed assignee must have notified us of them moving into the house.

The length of time the proposed assignee must 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.

Verbal notification from the proposed assignee or tenant will not be accepted; tenants will have to inform the association in writing.

### **Applications and consent**

Requests to assign a tenancy must be submitted in writing by the tenant and replied to within one month. If the current tenancy is a joint tenancy, then all joint tenants must consent to the assignation and sign any application form or letter. If a decision is not given to the applicant within one month then the permission is assumed to be given.

We may refuse consent if we have reasonable grounds to do so. The following are possible but not exclusive grounds under which we may refuse an application including those set out in the Housing (Scotland) Act 2001:

- The notification requirement has not been satisfied
- The property has not been the assignees only or principal home for 12 months prior to the application for consent to assign
- The proposed assignee is not a person to whom the Association would give reasonable preference when selecting tenants for allocations under section 20 of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2014:
  - i. People who are homeless or are threatened with homelessness with unmet housing needs
  - ii. Living under unsatisfactory housing conditions with unmet housing needs
  - iii. A social housing tenant which is under occupying their current house
- The tenant or assignee has been issued with a Notice of Proceedings for Possession and the notice is still effective
- An order for recovery possession has already been made on the tenant or assignee
- The tenant has rent arrears
- The tenant has breached the terms of their current tenancy, for example through condition of their property
- There is an existing Antisocial Behaviour Order against the tenant, member of the tenant's household, or the assignee
- The assignation would be to the financial benefit of either party or someone connected to them in some way
- The assignation would lead to statutory overcrowding
- The assignation would lead to under-occupation
- The property has been specially designated or adapted for the benefit of someone with special needs, and there will be no one in the property after the assignation who would benefit from the adaptations
- Or we have plans to carry out work to the property or building which would affect the accommodation



### **Minute of variation**

Any tenant taking over the tenancy through assignation must accept the terms of the tenancy by signing a minute of variation. The new assignee should be given a copy of the tenancy agreement.

### **Arrears and other obligations**

Following an assignation the assignee does not inherit rent arrears or any other outstanding tenancy related obligations of the original tenant. The proposed assignee can agree to take on the arrears if this is discussed and agreed with the current tenant.

Any credit on the account would be allocated to the former tenant.

### **Sole to Joint Tenancy Changes**

Any individual has a right to become a joint tenant, as long as the property is to be their only or principal home. The property must have been the only or principal home of the proposed joint tenant for at least 12 months immediately before the date a written request is submitted and the tenant, a joint tenant or the person who wishes to become a joint tenant must have notified the Association of them moving in to the house.

The proposed joint tenant and any existing joint tenant must apply to the Association in writing along with the tenant. Verbal notification alone will not be accepted.

The length of time the proposed joint tenant must have been living in the property starts from the date the Association are notified that the person living in the property as their only or principal home. Tenants must confirm this in writing.

The residency and notification requirement applies to spouse, civil partners and cohabitants.

There is no limit on the number of occasions on which a joint tenancy can be created. Joint tenants each have exactly the same rights and obligations as each other.

Joint waiting list applicants, married couples and cohabiting couples will normally be offered a joint tenancy when offered their first tenancy.

There is no limit to the number of joint tenants, unless this would breach the maximum number of occupants allowed in the property.

### **Applications and consent**

The tenant and prospective joint tenant must both apply in writing if they wish to request a joint tenancy. We will grant the joint tenancy unless there are reasonable grounds for not doing so. The following are possible but not exclusive grounds under which we may refuse an application:

- The person becoming a joint tenant must have lived there for 12 months starting from the date of notification
- The Association must have been notified that the proposed joint tenant has been living in the property for 12 months prior to the joint tenancy application date
- The tenant or applicant has been issued with a Notice of Proceedings for Possession and the notice is still effective
- An order for recovery of possession of the property has been made against the tenant or applicant
- Creation of the joint tenancy will result in statutory overcrowding
- The tenancy will not be used by the proposed joint tenant as their only or principal home
- There is an existing Antisocial behaviour order against either party
- If the tenant has arrears and has not adhered to an arrangement for a minimum of 3 months

If a joint tenant breaks the condition that the property will be used as their only or principal home then we may take action to end their interest in the tenancy by following our abandonment procedure.

### **Joint to sole tenancy changes**

If one joint tenant wants to bring their interest in a joint tenancy to an end, they can do so by giving four weeks written notice to the landlord and to each of the other joint tenants

Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 any joint tenant relinquishing a tenancy must also give notice to any 'non-entitled spouse' I.e. wife, husband or civil partner who is not a joint tenant.

When the 4-week notice has expired, the joint tenant who has given notice will be freed of his or her right and obligations under the SST. It is not possible for the joint tenant to terminate the rights of any other joint tenant.

Any remaining joint tenant will be responsible for any outstanding obligations of the tenancy including rent arrear and any other tenancy related debts.

### **Appeals**

We will offer tenants or applicants under terms of this policy the opportunity to appeal against any decision relating to succession, assignation or joint/sole tenancies. Any such appeal will be heard by the Housing Services Manager who has not previously been involved in making a decision on the case. If the tenant is still dissatisfied after the outcome of the appeal, then they may make a complaint which will be dealt with under our complaints handling procedure

The applicant is entitled to appeal to court by summary application on decisions relating to assignation. The court may consider any refusal to be unreasonable and direct us to consent to the application.