MANOR ESTATES
Housing Association



Relationship Breakdown

RELATIONSHIP BREAKDOWN

This leaflet is designed to provide basic advice and information for tenants and their partners about their rights to live in the property after a relationship breakdown. You should, however, seek independent legal advice about this matter if you are experiencing relationship breakdown.

OCCUPANCY RIGHTS AND TENANTS

If you are married or in a civil partnership and you are not the tenant, you are entitled to occupancy rights under the Matrimonial Homes (Families and Children) Act 1981. Occupancy rights mean that you have a right to live in the property and this can only end if:

- The marriage or civil partnership ends through divorce or death;
- The tenancy has been ended by eviction action;
- The tenant gives up their tenancy;
- You are excluded from the property via an Interdict and/or Exclusion Order.

If you are not married or in a civil partnership and you are not the tenant, you do not have automatic occupancy rights. However, you can apply in the court to have occupancy rights granted for an initial six month period.

TRANSFERRING THE TENANCY

If you are not the tenant, but your ex-partner moves out, you may be able to get the tenancy transferred into your name.

If you are a joint tenant, you may be able to get the tenancy transferred into your name only. If your ex-partner will not agree to this voluntarily, you may be able to apply to the court for a transfer of tenancy. You will need independent legal advice to look at this option further.

If your partner has already left the property and you do not know where they are, you can ask us in writing to serve an Abandonment Notice on them at your address. Once the Notice is active, we can transfer the tenancy from a joint to a sole tenancy in your name.

VOLUNTARY TENANCY TRANSFERS

You may be able to come to an agreement with your spouse or partner to transfer the tenancy into your name. This means that we will end your partner's tenancy and then issue you with a new tenancy once we have permission in writing from you and your ex-spouse or ex-partner. We will not refuse to do this unreasonably, but we may not agree to it if there are rent arrears on the account, or if there have been other concerns about the tenancy.

Assignation

If your partner is the tenant, they can ask us in writing to assign the tenancy to you. This means that all the rights and responsibilities of the tenancy are given over to you and you become the tenant. You will be expected to have lived in the property for at least six months before requesting the assignation. We will only refuse an assignation request if we have good reason to do so.

You should bear in mind that any rent arrears which have built up while your spouse or partner was the tenant will become your responsibility, as well as any outstanding charges. If you and your partner were joint tenants, you will both remain liable for any arrears and outstanding bills which occurred whilst you were joint tenants.

TRANSFERS OF TENANCY THROUGH THE COURTS

Who can apply for a transfer of tenancy?

If you and your ex-partner cannot agree voluntarily between you, you can apply to the court for a transfer of tenancy. You are considered to be partners if you:

- Are married;
- Are in a civil partnership;
- Live together as a couple (and have done for at least six months).

When can I apply for a tenancy transfer?

Many transfers of tenancy applications are decided as part of a divorce or dissolution of civil partnership action. You can also apply for a transfer of tenancy while you are still married, in a civil partnership, or living with your partner.

What does the court need to consider?

The court will consider a number of factors before deciding whether or not to grant you a transfer. These include:

- How you and your spouse or partner have behaved towards each other;
- The needs of any children you have;
- The needs of you and your spouse or partner and your financial situations;
- Whether either of you uses your home in connection with your job or business;
- Whether the entitled partner (that is, the person whose name is on the tenancy agreement) has offered the non-entitled partner any alternative accommodation;
- Whether you will be a suitable tenant (for example, if you have had problems maintaining a tenancy in the past this can be taken into account).

You will need to tell us that you have applied for a tenancy transfer and we will have the opportunity to put forward our views in court should we wish to.

What happens if I get the tenancy transferred?

If your application is successful, the court may order you to pay compensation to your spouse or partner as part of the transfer.

If your partner has built up rent arrears, these won't be transferred to you, but any other charges (for example, for repair work, bills or council tax) will be. If you and your partner were joint tenants before the tenancy was transferred into your name solely, you will both remain jointly and separately responsible for paying any outstanding charges or bills which arose before the transfer took place.

The court will only decide to allow the transfer if they decide it is reasonable for your partner to be evicted; for example, if they have other accommodation they could reasonably occupy.

Will my partner have any right to live in our home once the tenancy has been transferred to me?

If you are married or in a civil partnership, your partner will still have a right to live in the family home once the tenancy has been transferred to you. If you want to keep them away from your home (for example, because they are threatening, harassing or harming you), you will need to apply to the court for an interdict or an exclusion order. You will need legal advice in order to do this.

If you have the tenancy transferred or assigned into your name and after you have done this your civil partner or spouse stops living with you, they will lose all their rights over the home. This means they won't to be able to come back and live in the home without your permission. They may, however, be able to apply to the court to have occupancy rights granted.

If you and your partner are not married or in a civil partnership, your partner will not have any occupancy rights once the tenancy has been transferred into your name, even if they continue to live with you. They may, however, apply to the court to have occupancy rights granted.

FURTHER INFORMATION & ADVICE

Shelter Scotland *(advice on preventing homelessness)*
Freephone 0808 800 4444
Shelter Housing Aid Centre
Unit 2, Kittles Yards
EDINBURGH
Tel 0131 466 8031

Scottish Women's Aid *(support, advice & refuge to women suffering from domestic abuse)*
Tel: 0131 475 2372 or check the website
www.scottishwomensaid.org.uk

24 hour abuse helpline: 0800 027 1234

Men's Advice Line *(support and advice for men in abusive relationships)*
24 hour helpline - Tel: 0800 801 0327 or check the website
www.safreline.org.uk

Citizens Advice Bureau *(advice on housing and legal matters)*

23 Dalmeny Street	0131 510 5510
31-33 Pennywell Road	0131 510 5510
58 Dundas Street	0131 510 5510
8A-B Bath Street	0131 510 5510

OR check the website for your nearest local office www.cas.org.uk

Family Law Centre *(legal advice on relationship breakdown, court proceedings)*

See Yellow Pages for your nearest family lawyer or visit the website
www.scottishlaw.org.uk

Manor Estates Housing Association
Suite 4, 5 New Mart Place
Edinburgh
EH14 1RW

Tel:- **0131 510 8540**

Email:- **info@manorestates.org.uk**
Web:- **www.manorestates.org.uk**

OSCR
Scottish Charity Regulator
www.oscr.org.uk
Registered Charity
SC023106

Do you need information provided in a different language or format?

HAPPY TO TRANSLATE

We can arrange to have information translated into most languages - please contact the office for further information.

We can also provide information in alternative formats (for example, large font or on CD) - again, contact the office for further details.