Assignation, Subletting, Joint Tenancies and Succession to a Scottish Secure Tenancy (Ref: HM/05)

Purpose of Policy:

The purpose of this Policy is to outline how the Association complies with the requirements of relevant legislation in relation to assignation, subletting, joint tenancies and succession to a Scottish Secure Tenancy.

Policy Monitoring Details	
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Regulatory Outcomes being achieved:	Scottish Social Housing Charter Outcomes 1 Equalities 2 Communication 11 Tenancy sustainment
Association Values	▪ Committed ▪ Agile ▪ **People-Focussed** This Policy clearly explains how the Association deals with requests for assignation, subletting and joint tenancies and the conditions that apply to tenancy succession ▪ Professional
Relevant Legislation	Housing (Scotland) Act 2001 Housing (Scotland) Act 2014 Housing (Scotland) Act 2025
Tenant Consultation Required:	No
Equalities Impact Assessment	No

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1. Introduction

1.1 This Policy has been drafted in accordance with the requirements of the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014 and reflects subsequent amendments introduced by the Housing (Scotland) Act 2025. The Policy takes account of the guidance for social landlords published by the Scottish Government.

1.2 This Policy details how the Association will deal with requests for permission to:

- Assign a tenancy;
- Sublet a tenancy;
- Create a joint tenancy; or
- Succeed to a tenancy.

1.3 Where a tenant notifies the Association that a person or persons will be moving into their home and it is clear that this will result in overcrowding, the Association will not give permission for that person to live in the house. In these circumstances, that person will not be entitled to be assigned the tenancy, become a joint tenant or succeed to the tenancy.

2. Assignation

2.1 Assignation of tenancy occurs when the tenant assigns his or her rights to the tenancy to another person who has been living in the property, usually when the tenant wishes to move out.

2.2 Any tenant wishing to assign their home to someone else must apply in writing to the Association for permission to do so and must obtain the Association's written consent before the tenancy can be assigned.

2.3 In order for an assignation request to be considered, the following conditions must be met:

- The house must have been the tenant's only or principal home during the 12 months immediately before the tenant applies for written permission to pass their tenancy to someone else; and

- The person the tenant wishes to pass their tenancy to must have lived at the property as their only or principal home for the 12 months before they apply; and

- The tenant, joint tenant or person they wish to assign their tenancy to must have notified the landlord that the person they wish to assign the tenancy to is living in the house. The 12-month period does not start until the landlord has been notified that the person is living in the property as their only or principal home.

2.4 The Association may refuse permission to assign a tenancy where it is reasonable to do so. The main reasons likely to lead to refusal are:

- Where the Association would not give the person the tenant wishes to pass the tenancy to reasonable preference under the Allocation Policy; or

- Where the assignation would result in the home being under-occupied or overcrowded; or

- Where the Association has served notice of proceedings on the tenant in respect of any breach of the tenancy agreement; or

- Where an order for recovery of possession of the house has been made against the tenant; or

- It appears to the Association that payment (other than relating to a reasonable rent or deposit) has been received by the tenant in consideration of the assignation.

3. Subletting

3.1 Subletting usually takes place where a tenant is going to be away from the property for a fixed period of time and wishes to sublet it to another individual during that time. The tenant remains responsible for ensuring that all tenancy conditions are fulfilled.

3.2 Any tenant wishing to sublet all or part of their home must apply in writing to the Association for permission to do so and must obtain the Association's written consent before the sublet can take place. We will consent or refuse consent within one month of receipt of the application.

3.3 The tenant applying to sublet all or part of their home must have been the tenant throughout the 12 months immediately before they apply for written permission to sublet their home; or

If they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; **and** the person who was the tenant at that time must have notified the landlord that the person who is now the tenant was living there.

3.4 There are no residency conditions for the person that wants to live in the property as a sub-tenant.

3.5 The Association may refuse permission to sublet a tenancy where it is reasonable to do so. The main reasons likely to lead to refusal are:

- Where the sublet would result in the home being under-occupied or overcrowded; or
- Where the Association has served notice of proceedings on the tenant in respect of any breach of the tenancy agreement; or
- Where an order for recovery of possession of the house has been made against the tenant; or
- It appears to the Association that payment (other than relating to a reasonable rent or deposit) has been received by the tenant in consideration of the sublet.

4. Joint Tenancies

4.1 Any tenant wishing to have someone added to their tenancy agreement as a joint tenant must apply in writing to the Association and must obtain the Association's written consent. The person the tenant wants to add as joint tenant, and any existing joint tenants, must apply in writing along with the tenant.

4.2 In order for the Association to consider an application for a joint tenancy, the following conditions must be met:

- The proposed joint tenant must have lived at the property as their only or principal home for the 12 months before the tenant applies for them to become a joint tenant; and
- The tenant, or any existing joint tenant must have notified the Association that the person they wish to become a joint tenant with is living in the house. The 12-month period does not start until the Association has been told that the person is living in the property as their only or principal home.

4.3 The 12-month period applies to anyone wanting to become a joint tenant, including the tenant's spouse, civil partner or co-habiting partner.

4.4 The Association may refuse permission to grant a joint tenancy where it is reasonable to do so. The main reasons likely to lead to refusal are:

- Where the Association has served notice of proceedings on the tenant in respect of any breach of the tenancy agreement; or
- Where an order for recovery of possession of the house has been made against the tenant.

5 Succession to a Scottish Secure Tenancy[1]

5.1 On the death of a tenant there may be a right of succession to the tenancy for defined members of the tenant's family or household. Succession is a continuation of the existing tenancy and is not a new tenancy.

[1] This policy reflects legislative changes introduced by the Housing (Scotland) Act 2025, which reduced the qualifying period for succession from 12 months to 6 months for applicable cases from August 2026.

5.2 Succession is an automatic right and cannot be refused on the basis of tenancy breaches by the deceased tenant.

5.3 Only 'qualified persons' have the right to succeed to a Scottish Secure Tenancy (SST) on the death of the tenant. The qualifying residence period will only commence once the Association has been formally notified that the individual is residing in the property as their only or principal home.

The rights of succession of qualifying persons are at 3 levels, in order of consideration:

Level 1

The tenant's spouse, civil partner or joint tenant can succeed to the tenancy provided that the potential successor's only or principal home was the house in question at the time of the tenant's death. A spouse, civil partner or joint tenant wishing to succeed to an SST does not have to have occupied the property for a minimum period.

The tenant's partner (cohabitants of either sex and including same sex cohabitants) can succeed to the tenancy if the house has been their only or principal home for a period of at least 6 months prior to the tenant's death.

Level 2

If none of the qualifying persons at Level 1 want the tenancy of if there is no spouse, civil partner, joint tenant or cohabitant, a member of the tenant's family[2] aged 16 or over may succeed, provided the house has been their only or principal home for a period of at least 6 months prior to the tenant's death.

Level 3

If there is no-one at Level 1 or 2 able to or wishing to succeed to the tenancy, a carer aged 16 or over who has given up a previous only or principal home in order to care for the tenant can succeed, provided the house has been their only or principal home for a period of at least 6 months prior to the tenant's death.

5.4 If there is more than 1 qualifying person within any of the 3 levels, they must decide amongst themselves who is to succeed to the tenancy. If they cannot agree within 4 weeks of the date of death of the tenant, the decision will be made by the Association.

5.5 If a qualifying person living in the property does not wish to succeed to the tenancy, they should notify the Association within 4 weeks of the date of death of the tenant. Legally, they have up to 6 months from the date of death to vacate the property. They will be charged for occupancy at the same rate as the rent on the property, but payments will be taken as 'in lieu of occupancy charges' and no SST will be created.

5.6 If a level 1 qualifier declines the tenancy, it is the Association's responsibility to ascertain whether there are any level 2 qualifiers and to write to each such person, to advise them of their right to succeed. If a level 2 qualifier declines the tenancy,

[2] A family member is defined according to Section 108 of the Housing (Scotland) Act 2001 – see Appendix 2

it is the Association's responsibility to ascertain whether there are any level 3 qualifiers and to write to each such person to advise them of their right to succeed.

5.7 A tenancy can only be succeeded to twice. If a property has been succeeded to twice, the third death will end the tenancy, unless there is a surviving joint tenant, in which case the tenancy will continue.

5.8 If after two successions, the second successor dies and there is a person in the household who would otherwise qualify to succeed to the tenancy (but is not a joint tenant), they will be allowed to remain in the property for a maximum of 6 months following the date of death of the tenant. They will be offered an occupancy agreement in line with section 22a of the Housing (Scotland) Act 2001.

Adapted Properties

5.9 If the property has been designed or substantially adapted for a person with special needs, succession will only take place in the following circumstances:

- The qualifying person is at level 1 **and** it is the first succession of the tenancy; or
- The qualifying person is at level 1, it is the second succession of the tenancy **and** the qualifying person requires the property for their own special needs; or
- The qualifying person is at level 2 or 3 **and** requires the property for their own special needs, regardless of whether it is a first or second succession.

5.10 Where the qualifying person is unable to succeed to the tenancy because they do not require the designed or adapted property, the tenancy will be terminated and the Association will offer the person suitable alternative accommodation.

6 General

6.1 In accordance with the legislation, requests for permission under this Policy will be responded to within 28 days. Where the tenant does not receive a response within 28 days, they are entitled to assume that permission has been granted.

7. Publicising This Policy

7.1 This Policy will be available:

- On the Association's website;
- In hard copy on request;
- In alternative formats and languages on request.

7.2 Any tenant submitting a request for permission under this Policy will be provided with an extract of the relevant section of the Policy.

APPENDIX 1

Acceptable Forms of Notification

The Housing (Scotland) Act 2014 and Housing (Scotland) Act 2025 are explicit that it is the tenant's responsibility to advise the Association of any changes to their household.

Where there is a qualifying period that must be fulfilled before any of the activities outlined in this policy can take place, that period does not start until the tenant notifies the Association that the person who wishes to:

- Be assigned the tenancy; or
- Sublet the tenancy; or
- Become a joint tenant; or
- Succeed to the tenancy

is living in the house and that the house is that person's only or principal home.

Tenants should notify the Association of any household changes by:

- Submitting a letter signed by the tenant, confirming the name(s) and date(s) of birth of any person(s) moving in or out of the house. The letter should also specify the relationship between the tenant and other person(s) and the date from which the change is taking place; or

- Submitting an email from the tenant, confirming the details outlined above; or

- Completing a household details form and submitting this to the Association.

All notifications received will be acknowledged within 5 working days.

APPENDIX 2

Definition of Term 'Member of the Family'

Member of the family:

As defined by Section 108 of the Housing (Scotland) Act 2001

For the purposes of this Act, a person ("A") is a member of another's ("B's") family if:

- A is the spouse of B, or A and B live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex; or

- A is B's parent, grandparent, child grandchild, brother, sister, uncle, aunt, nephew or niece.

For the purpose of subsection (1)(b):

- A relationship by marriage is to be treated as a relationship by blood;
- A relationship of the half-blood is to be treated as relationship of the whole blood;
- The stepchild of a person is to be treated as that person's child; and
- A person brought up or treated by another person as if the person were the child of the other person is to be treated as that person's child.

Close relative:

A person is a close relative if:

- He or she is the spouse or he or she cohabits with that person (whether the same or different sexes); or
- He or she is that person's parent, grandparent, child, stepchild, grandchild, brother or sister.