

# Assignment Policy

Customer  
Focus

Respect

Communication

Integrity



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## **Introduction**

- 1.1 The Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) and the Scottish Secure Tenancy Agreement make provision for tenants to assign the tenancy to another person with the Association's permission.
- 1.2 The Association recognises that there may be 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.

## **2.0 Aims and Objectives**

- 2.1 The primary aim of this 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.
- 2.2 The key objectives include:
  - Ensuring that the Association, complies with the law and operates in accordance with good practice.
  - Ensuring that tenants meet all their statutory obligations relating to the assignation of their tenancy.
  - Recognising and protecting the legal rights of the tenant and other members of the household.
  - Ensuring that all applications to assign a 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 allocation policy.
  - Protecting tenants from being coerced or pressurised by another person into assigning their tenancy.
  - Allowing the Association to keep accurate records of who is residing in its properties
  - Ensuring that the Assignation of tenancy process is open and accessible to all tenants of the Association
  - Ensuring that the legal tenant of the property is living in the property and fulfilling their obligation to use the house as their only or principal home.

## **3. Tenants Right to Seek Assignation of Tenancy**

- 3.1 The Housing (Scotland) Act 2001, Section 32 and Part 2 of Schedule 5, entitles 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.
- 3.2 Part 2 of Schedule 5 provides a right of appeal to the court by the tenant whose landlord refuses consent.

- 3.3 The Scottish Secure Tenancy Agreement obligates a tenant to seek written permission from the Association to assign a tenancy.
- 3.4 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.

#### **4. Applying for Consent to Assign a Tenancy**

- 4.1 The application must be made in writing by the tenant by *completing the relevant application form*, and in the case of a joint tenancy, agreed by all tenants in the property.

*The proposed new tenant must also complete the relevant application form.*

- 4.2 The application must state:

- Details of the proposed change including who the tenancy is being assigned to.
- The proposed date from which the assignation is to take effect.

- 4.3 Where applicable and 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 to get a written declaration from their ex-partner that s/he does not wish to invoke their occupancy rights.

#### **4.4 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 assigned to them.

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 consider treating the tenant as having abandoned the property and will instigate the Abandonment Policy and procedures.

Consideration to assigning 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.

#### 4.5 Court Order

Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 a spouse or co-habitee may apply to the Courts to have the tenancy of the house assigned 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 into their name is unlawful or unreasonable.

The Association may also apply to the courts to have the tenancy transferred to a spouse 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 assignation of the tenancy, the Association must comply with the Court Order.

### 5. Conditions for Granting Permission to Assign a Tenancy

5.1 Under the terms of the Housing (Scotland) Act 2001, permission to assign a tenancy is at the discretion of the landlord. However, the Act also states that permission cannot be unreasonably withheld.

5.2 An application to assign the tenancy will only be considered when the tenant and any proposed tenant can clearly demonstrate that the house has continuously been their only or principal home for at least the 12 months prior the application being made. The 12-month period cannot be considered unless we have been told that the person is living in the property as their only or principal home. We must have been told that by the tenant, a joint tenant, or the person you now wish to pass the tenancy to. If we have already been told that the person is living in the property we do not have to be notified again.

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; AND
- Declared as part of the household with the Council Tax Department; AND
- Claimed any benefits from that address AND
- Been able to provide evidence of residency.

5.3 In considering an application, the association must be satisfied that:

- Neither party is being unduly coerced or pressurised
- The Assignation procedures are not being used as a means of circumventing the Association's Allocation Policy (See 6.4)
- There are genuine reasons for the assignation
- All parties fully understand and accept all the implications and responsibilities of assigning the tenancy.

## **6. Grounds for Withholding Permission**

### **6.1 Residency**

The Association will not permit a tenancy to be assigned to any person who cannot prove that the house has been their only or principal home for the 12 months prior to the application being made.

Under normal circumstances, an assignation 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 assigning the tenancy (e.g. on the grounds of ill-health).

### **6.2 Household Size**

Consent for an assignation of tenancy will not be given where the assignation would result in the property being overcrowded. Where an assignation would result in the house being under occupied by more than one bedroom, the Association will seek to offer the household more suitably sized accommodation. From 1 November 2019, new reasons when we can refuse an application for assignation have been added to the existing list of reasons at section 32 of the Housing (Scotland) Act 2001. This includes where, in our opinion, the assignation would result in the home being under occupied; in this case the application would be refused.

The size definition in the Association's Allocation Policy will apply when assessing the issue of overcrowding and under occupancy.

### **6.3 Monies owed to the Association**

An assignation 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 reconsidered.

### **6.4 Proposed Tenant**

An assignation of tenancy will not be approved where the proposed tenant has a history of anti-social behaviour with the Association

The proposed tenant must also have no outstanding debt with the Association; or have an agreed arrangement to repay in place.

From 1 November 2019, new reasons when we can refuse an application for assignation have been added to the existing list of reasons at section 32 of the Housing (Scotland) Act 2001. This includes where we would not give the person you wish to pass the tenancy to priority under our allocations policy - where someone, if we refused the application, would have no housing need in terms of our allocations policy.

## 6.5 Property Condition

Permission for an assignation 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.

## 6.6 Legal Action

Where the Association has served a Notice of Recovery of Possession against the tenant permission to assign the tenancy will not normally be given. Granting consent will only be considered where the Association believes that the assignation will be in the best interests of the Association, the tenant's household and/or the neighbours.

Permission will not be given where a court order for the recovery of possession has been made against the tenant.

## 6.7 Proposed Works to the Property

Permission to assign the tenancy may be withheld where the Association plans to carry out works to the property, other than of a minor nature.

## 6.8 Payments

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

## 6.9 General

Sub Section 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 an assignation of 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.

## 7. Notification of Decision

- 7.1 The association must notify the tenant of its decision regarding the assignation of tenancy within ONE MONTH of the completed application form 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 *subject to there being no outstanding information due in support of the application.*

- 7.2 Where permission for the assignation is not being given the Association must give the grounds for refusal in writing to the tenant within one month of the completed application form being submitted.

## **8.0 Method of Transfer**

- 8.1 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.
- 8.2 Although with an assignation no new tenancy is created, the association will normally insist that a new tenancy agreement is signed in addition to assignation documentation being signed by all the parties involved.

## **9 Appeals and Complaints**

- 9.1 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure.
- 9.2 Every service user has final recourse to the Scottish Public Services Ombudsman, please refer to the separate Complaints Handling Procedure.

## **10 Applications from Employees, Governing body members etc.**

- 10.1 The Association may receive applications from tenants who are employees, board members, former employees, former board members or close relations of the above in line with the eligibility criteria within this policy. In the event of such an application being approved, the decision made regarding this must comply with the guidelines laid down in the Association's Entitlements, Payments and Benefits Policy.

## **11 Data Protection & Confidentiality**

- 11.1 All information supplied to the Association by applicants will be treated as strictly confidential and will be handled in line with current Data Protection Act legislation. Information will not be revealed to any other party without the prior consent of the applicant or in line with data protection principles. Applicants have the right to inspect any records held on their housing application. For more information, please refer to the association's Privacy Policy.
- 11.2 The Association may have to make enquiries to confirm information provided in the application. Express consent is granted by the applicant by accepting the declaration on the application form for data to be revealed to allow exchange of information with other agencies where appropriate and for their application to form part of their tenancy record.

## **12 Equalities Commitment**

- 12.1 Cloch Housing Association Ltd is committed to tackling discrimination on the grounds of sex or marital status, racial grounds, or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 12.2 Cloch seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work.

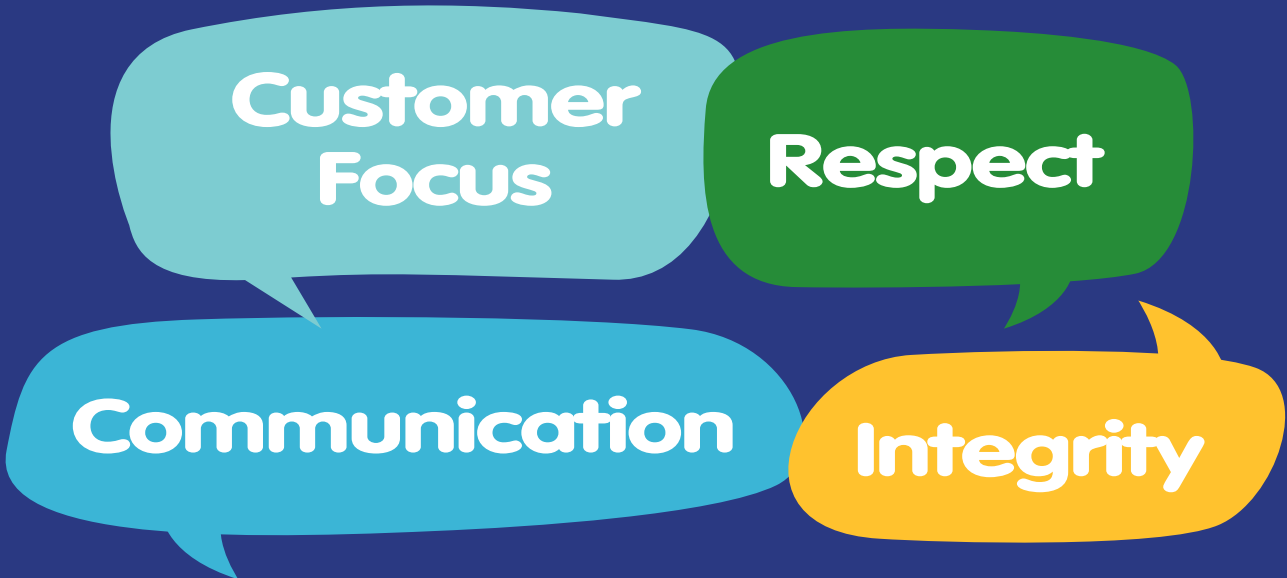
## **13 Policy Availability**

- 13.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

## **14 Monitoring and Review**

- 14.1 This policy will be reviewed every five years or as legislative changes deem appropriate.





CLOCH HOUSING ASSOCIATION LTD	
<b>Policy Name</b>	Assignment Policy
<b>Policy Category</b>	HM
<b>Policy Number</b>	030
<b>Date Adopted</b>	01/03/1998
<b>This Review</b>	27/11/2018
<b>Next Review</b>	November 2023
<b>Equalities Impact Assessment Required</b>	No
<b>Link to other policies</b>	
<b>Consultation</b>	Internal
<b>Need for Procedure</b>	