

# **FORTH HOUSING ASSOCIATION LIMITED**

## **ASSIGNATION & SUCCESSION POLICY**

Governance: Housing Management

Code: HM 05

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Cross Reference: HM 03 Allocations  
HM 11 End of Tenancy Procedures  
HM 19 Start of Tenancy Procedures  
MO 08 Minimum Standard For Re-let Properties

Guidance: Housing (Scotland) Act 2014

Forth's Scottish Secure Tenancy Agreement

Regulatory Standards Of Governance and Financial Management Standard 4 - 4.1, 4.2  
Standard 7 - 7.5



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# **FORTH HOUSING ASSOCIATION LIMITED**

## **Assignment & Succession Policy**

### **1.0 Introduction**

- 1.1 The purpose of this policy is to outline Forth's requirement to accept and consider any application to assign a tenancy or a tenancy being succeeded as set out in the *Housing (Scotland) Act 2001* and amended by the *Housing (Scotland) Act 2014*.
- 1.2 Assignment describes the process that takes place when a tenant (the principal tenant) transfers the rights and responsibilities of their tenancy to another person. It is not the formation of a new tenancy, as the other person will take over any problems with the tenancy such as rent arrears.
- 1.3 Succession describes the situation when a tenant dies and another person is entitled to take over the tenancy of the property.

### **2.0 General Principles**

- 2.1 The Association's tenants have the right to assign their tenancy provided that the eligibility criteria are met and they have the prior written consent of the Association.
- 2.2 The Association will ensure that the principal tenant and the person who will be assigned the tenancy (assignee) understand the implications of the assignment and of any tenancy problems which may be transferred such as rent arrears.
- 2.3 The contractual rights relating to succession to the Association's secure tenancy are contained in the Association's Scottish Secure Tenancy Agreement.

### **3.0 Terminology**

- 3.1 The terms for these two distinct tenancy transactions are not interchangeable. Each has different legal implications for both the tenant and Forth Housing Association.

### **4.0 Assignment**

- 4.1 The Association will consider any application to assign a tenancy where the tenant has formally applied in writing for permission to do so.
- 4.2 Consent to assign a tenancy will only be given where it is reasonable to do so in consideration of the circumstances of the tenant and the assignee.
- 4.3 If you want to assign your tenancy, the property must have been your only or principle home during the 12 months immediately prior to your application to pass your tenancy onto someone else.

- 4.4 The person that you wish to pass your tenancy on to must have lived at the property as their only or principal home for at least 12 months before the date of your written request and you must have notified us in writing of the person living in the property, as the 12 month residency period does not start until we have been notified.
- 4.5 We will not unreasonably refuse permission for an assignment. Reasonable grounds for refusing permission include the following:
- The residency and notification requirement has not been satisfied
  - Assignee would not get reasonable preference
  - A Notice of Recovery of Possession has been served against you;
  - An Order for Recovery of Possession has been made against the tenant;
  - The proposed assignment would result in specially adapted accommodation (such as wheelchair housing) or accommodation with additional services (such as sheltered housing) being occupied by an assignee who did not require such accommodation);
  - The proposed change would lead to an overcrowding situation;
  - The proposed change would lead to an under-occupying situation
  - The Association intends to carry out work on the house which would affect the part of the house connected with the proposed change;
  - A payment has been received by the tenant, in cash or in kind, in consideration of the assignment other than a reasonable rent or deposit;
  - Where there is substantial damage or disrepair to the property which has been caused by the tenant, a member of their household or a visitor to the property;
  - The Assignor has outstanding debt owed to the Association in terms of their tenancy
  - Where either party has provided false information in relation to the assignment or has provided false information in order to bring about the assignment
  - Where the proposed assignee has pursued a course of anti-social behaviour, or has been convicted of using a previous tenancy for illegal or immoral purposes, or has had an ASBO granted against them or a member of their household within the last three years

These examples do not in any way alter our general right to refuse permission on reasonable grounds.

- 4.6 If you are a joint tenant, we will need the other tenant's written consent to the proposed change.

## **5.0 Transfer of Tenancy of Marital Home**

- 5.1 This is a compulsory assignment which can be imposed in appropriate circumstances by the courts for example where there is a history of domestic violence, without the consent of either the landlord or the existing tenant.
- 5.2 In these circumstances the tenancy is transferred from one spouse to another. The new tenant takes on all the liabilities of the tenancy, apart from the existing rent arrears, which remains the responsibility of the spouse who was the original tenant.

5.3 If there is a joint tenancy, the court has the power to grant the tenancy to one party only.

## 6.0 Succession

The Housing (Scotland) Act 2014 introduces a 12 month qualifying period and notification requirement before qualifying persons have the right to succeed to a SST on the death of the tenant

6.1 A tenancy will pass to a qualified person on the death of the Association tenant. The tenancy may be inherited by one of the following people in the following way:

### 6.2 Level One

- your spouse, civil partner or co-habitee if the house was their only or principal home on your death; **OR**
- a joint tenant, if the house was his or her only or principal home on your death.

In the case of a co-habitee of either sex, he or she must have occupied the house as his/her only or principal home for at least 12 months immediately before your death and you must have notified us in writing of the person living in the property, as the 12 month residency period does not start until we have been notified.

If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

### 6.3 Level Two

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of your family as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home for at least 12 months immediately before your death and you must have notified us in writing of the person living in the property, as the 12 month residency period does not start until we have been notified.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

## 6.4 Level Three

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home for at least 12 months immediately before your death and you must have notified us in writing of the person living in the property, as the 12 month residency period does not start until we have been notified.
- he or she gave up another only or principal home before the death of the tenant.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

6.5 Succession will be limited to the first level (i.e. spouses, partners, co-habitees, joint tenants) in the case of houses designed or substantially adapted for people with special needs. Other categories of qualifying persons must also have a special need requiring that accommodation to succeed. We will offer an alternative property without adaptations if the person that qualifies to succeed to the tenancy does not need an adapted property.

6.6 If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months. Rent will be charged only for the actual period of occupation.

6.7 The tenancy can only be inherited twice under the provisions noted above. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the above paragraphs, the tenancy will continue for up to 6 months after the last death. The tenancy will not be a Scottish Secure Tenancy for that period.

6.8 Where no one qualifies to succeed the tenancy the Association will regard the tenancy as terminated as at the time of the death of the tenant and deal with the property in accordance with policies and procedures relating to voids.

## 7.0 Appeals and complaints

This section summarises our appeals and complaints system; information on these procedures are available as requested.

## **7.1 Appeals**

Any individual requesting to assign or succeed to a tenancy can appeal against a decision taken in line with this policy. They should appeal in writing to the Tenant Services Manager stating the grounds of their appeal.

If the individual remains dissatisfied with the decision, a written appeal can then be lodged with the Appeals Committee at the next appropriate meeting after the receipt of the appeal. This is subject to ratification by the Management Committee whose decision is final.

## **7.2 Complaints**

Complaints are different from appeals. Any complaints are dealt with under our Complaint Policy.

For example, an individual may complain if we don't:

- apply the Assignment and Succession Policy properly; or
- provide services in line with our published organisational standards.

We give tenants a copy of our complaints policy and procedure when they sign their tenancy agreement. We inform all applicants in our general information pack.

This information includes details about the Scottish Public Services Ombudsman; this agency deals with complaints involving failure to implement services properly (maladministration).

Applicants must use our internal complaints system before contacting the Ombudsman.

## **8.0 Review Period**

- 8.1 Management Committee will review this policy at least every 3 years, and staff are responsible for ensuring that they meet legal and good practice requirements