

FORTH HOUSING ASSOCIATION LIMITED

ASSIGNATION & SUCCESSION POLICY

Governance: Housing Management

Code: HM 05

Approval: January 2023

Review Date: January 2026

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



This document can be made available in alternative languages or formats (such as large print, audio etc). Please contact staff as required.

Policy Summary

This policy has been developed to show how Forth Housing Association manage assignation and succession requests from tenants.

Equalities

No equalities issues have been identified in the Equalities Impact Assessment Screening Questions and there is therefore no requirement to do a full Equality Impact Assessment.

Privacy

Data Protection legislation applies to customer records which will be managed accordingly. There is no requirement to do a full Privacy Impact Assessment.

Policy Owner

Name: Mareta Greig

Date of Next Review: January 2026

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*.

2.0 Principles

- 2.2 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.
- 2.2 Succession describes the situation when a tenant dies and another person is entitled to take over the tenancy of the property.

3.0 Aims and Objectives

- 3.1 The purpose of the Assignment & Succession Policy is to provide guidance to staff and tenants on how a request can be made and the likely outcomes.
- 3.2 The Policy further specifies conditions required to be met in order to obtain permission to either assign a property or succeed a property following the death of a tenant.
- 3.3 Tenants must comply with our guidelines. Failure to do so could result in enforcement action, which might include court action.

4.0 Policy Framework

- 4.1 The terms for these two distinct tenancy transactions are not interchangeable. Each has different legal implications for both the tenant and Forth Housing Association.
- 4.2 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.
- 4.3 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.

- 4.34 The contractual rights relating to succession to the Association's secure tenancy are contained in the Association's Scottish Secure Tenancy Agreement.
- 4.5 The Association will consider any application to assign a tenancy where the tenant has formally applied in writing for permission to do so.
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 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 the tenant or the household member involved in the assignment request;
 - 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.

- 4.10 If you are a joint tenant, we will need the other tenant's written consent to the proposed change.
- 4.11 Another instance is in relation to 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.
- 4.12 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.
- 4.13 If there is a joint tenancy, the court has the power to grant the tenancy to one party only.
- 4.14 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
- 4.15 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:

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.

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.

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.

- 4.16 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.
- 4.17 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.
- 4.18 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.
- 4.19 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.

5.0 Monitoring of the Policy

- 5.1 The Management Committee will review this policy at least every 3 years and staff are responsible for ensuring that it meets legal and good practice requirements.

6.0 Complaints and Appeals

- 6.1 Forth Housing Association welcomes complaints and positive feedback, both of which provide information which helps us to improve our services. We use a complaints procedure developed by the Scottish Public Services Ombudsman (SPSO) and the Scottish Housing Regulator.

The complaints procedure allows for most complaints to be resolved by front line staff within a five day limit (first stage), or if the complaint is complex, a detailed investigation will be made by a manager within a 20 day limit (second stage). At the end of the second stage our response will be made by a director. If the customer remains dissatisfied, he/ she may then refer the matter to the SPSO.

At each stage we will advise the customer how the complaint should be taken forward and advise which agency would be most appropriate to consider the case.

7.0 Equalities

- 7.1 Equality and diversity underpin all our activities and services. When delivering our services, we never discriminate on the basis of sex or marital status, race, disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions. Full details of our Equalities Policy can be found on our website www.forthha.org.uk or can be obtained from our office.

8.0 Data Protection - Privacy

- 8.1 We recognise the importance of data protection legislation, including the General Data Protection Regulation, in protecting the rights of individuals in relation to personal information that we may handle, use and disclose about them, whether on computer or in paper format. We will ensure that our practices in the handling, use and disclosure of personal information as part of the processes and procedures outlined in this policy comply fully with data protection legislation. More information is available from our Data Protection Officer

9.0 Availability

- 9.1 This policy is available on our website and can be made available in a number of other languages and other formats on request.

10.0 Review

- 10.1 This policy will be reviewed at least every 3 years by the Management Committee and staff are responsible for ensuring that it meets legal and good practice requirements.

Appendix 1 Equality Impact Assessment Screening Questions

Forth Housing Association Ltd Equality Impact Assessment Screening Questions

Assignment & Succession

Will the implementation of this policy have an impact on any of the following protected characteristics?

- | | | |
|-----------------------------------|------------------------------|--|
| 1. Age | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Disability | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Gender reassignment | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Marriage and Civil Partnership | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 5. Pregnancy and Maternity | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 6. Race | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 7. Religion or belief | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 8. Sex | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 9. Sexual orientation | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

If you have answered 'Yes' to any of these points, please complete a full Equality Impact Assessment. If you have answered 'No', you need take no further action in completing an Equality Impact Assessment

Appendix 2 Equality Impact Assessment Screening Questions

Forth Housing Association - Privacy Impact Assessment

1. A substantial change to an existing policy, process or system that involves personal information
Yes No
2. A new collection of personal information
Yes No
- 3.. A new way of collecting personal information (for example collecting it online)
Yes No
4. A change in the way personal information is stored or secured
Yes No
5. A change to how sensitive information is managed
Yes No
6. Transferring personal information outside the EEA or using a third-party contractor
Yes No
7. A decision to keep personal information for longer than you have previously
Yes No
8. A new use or disclosure of personal information you already hold
Yes No
9. A change of policy that results in people having less access to information you hold about them
Yes No
10. Surveillance, tracking or monitoring of movements, behaviour or communications
Yes No
11. Changes to your premises involving private spaces where clients or customers may disclose their personal information (reception areas, for example)
Yes No

If you have answered 'Yes' to any of these points, please complete a full Privacy Impact Assessment. If you have answered 'No', you need take no further action in completing a Privacy Impact Assessment.