



ASSIGNATION, SUB-LETTING, LODGERS, JOINT TENANCY & MUTUAL EXCHANGE POLICY

**Approved/last reviewed by Management Committee : 19 September 2019
Date due for review: September 2022**

The information in this document is available in other languages or on tape/CD, in large print and also in Braille.

For details contact the Association on 01236 457948 or e-mail: abonhillha@btconnect.com

ASSIGNATION, SUB-LETTING, LODGERS, JOINT TENANCY & MUTUAL EXCHANGE POLICY

1 INTRODUCTION

The purpose of this policy is to set out how we will manage applications for the following actions relating to Abronhill Housing Association tenancies;

- Assignment of a tenancy.
- Sub-letting a property.
- Taking in a lodger.
- Adding a person as a joint tenant.
- Mutually exchanging with another tenant.

Rights to request permission for these actions are set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014. This policy takes effect from 1 November 2019, which is the date from which the amendments of the Housing (Scotland) Act 2014 apply in relation to this area of housing law.

2 ASSIGNATION

Assignment is the passing over of all rights and responsibilities in respect of a tenancy to another person, who must be aged 16 or over, who is already resident in the tenancy. Tenants wishing to assign their tenancy must make such an application in writing. The assignment cannot proceed without our written consent. We will not withhold permission unreasonably. We will provide a standard application form on which a request for permission to assign a tenancy can be made.

There is a residency test which must be satisfied which is that the person who wishes to take on the tenancy via assignment must have been living in the property and using it as their only or principal home for at least 12 months prior to the date of the application to assign. Furthermore, Abronhill Housing Association must have been informed that the person the tenant wishes to assign the tenancy to has moved into the property and granted permission for that residence. The 12 month qualifying period only starts when the Association has been notified.

Reasonable grounds for the Association to refuse permission are undernoted. This list is not exhaustive and we may use other reasons provided we consider them to be reasonable.

- A Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Housing (Scotland) Act 2001.
- The Association has already obtained an order for recovery of possession of the house.
- It appears to the Association that the tenant is to receive a payment for the

assignment.

- The request would lead to overcrowding or under-occupation.
- The Association proposes to carry out work to the house or building which would affect the accommodation likely to be used by the assignee or other person who would reside in the house as a result of the transaction.
- The assignee would not fall into the “reasonable preference” categories for the allocation of social housing as per the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2014.

The Association will respond in writing to requests to assign a tenancy within one month, either approving or refusing the assignment application. If we fail to respond within one month of receipt of an application then the Association is taken to have consented to the application.

If the tenant applying to assign the tenancy is a joint tenant they are required to obtain the consent of the other joint tenant(s). If consent is not obtained the tenancy cannot be assigned.

When permission to assign the tenancy is granted the tenancy does not end and a new tenancy does not begin. Rather the tenancy continues but the tenant changes from a specified date. No new tenancy agreement is required. The application to assign and the Association’s letter granting permission is appended to the original tenancy agreement.

The new tenant takes on all the rights and responsibilities associated with that particular tenancy, including any rent arrears or other tenancy related charges. The former tenant will no longer be liable for any outstanding housing debts and will not be pursued for debt recovery.

The assignee will be asked to attend a meeting to discuss the content of the tenancy agreement and make them aware of their rights and responsibilities in relation to the tenancy. The assignee will be asked to sign a letter confirming that they understand that they are taking on the tenancy from a specified date and this will also be appended to the original tenancy agreement.

It is the responsibility of the tenants to advise other relevant authorities and service providers of the assignment arrangements.

3 SUB-LETTING

Sub-letting is when a tenant rents all or part of their home to another person (the sub-tenant) on a temporary basis.

Tenants wishing to sub-let all or part of their home must make such an application in writing. The sub-let cannot proceed without our written consent. We will not withhold permission unreasonably. We will provide a standard application form on which a

request for permission to sub-let can be made.

The tenant must provide the following information;

- The reason for the sub-let.
- The proposed duration of the sub-let.
- The amount of any deposit and the rent charges relating to the sub-let.
- The full name, date of birth and current address of the proposed sub-tenant.

There is a residency test which must be satisfied which relates to the tenant only, there is no residency test for the proposed sub-tenant. The tenant must have held the tenancy for that property for at least 12 months prior to the date of application to sub-let. Or, if they were not the tenant throughout that time 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 Association that the person who is now the tenant was living there. The 12 month period does not start until the Association has been notified.

Reasonable grounds for the Association to refuse permission are undernoted. This list is not exhaustive and we may use other reasons provided we consider them to be reasonable.

- A Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Housing (Scotland) Act 2001.
- The Association has already obtained an order for recovery of possession of the house.
- It appears to the Association that the tenant is to receive a payment for the sub-let, which is other than a reasonable rent or a reasonable and returnable deposit.
- The request would lead to overcrowding.
- The Association proposes to carry out work to the house or building which would affect the accommodation likely to be used by the sub-tenant or other person who would reside in the house as a result of the transaction.

The Association will respond in writing to requests to sub-let within one month, either approving or refusing the sub-let application. If we fail to respond within one month of receipt of an application then the Association is taken to have consented to the application.

Subject to all conditions being met, permission will be granted for a sub-let for a maximum initial period of 12 months. At the end of the period the tenant must either return to the property or will be permitted to make one further application for a further sub-let period of no more than 12 months.

Tenants who have permission to sub-let must advise the Association of any proposed rent increase from the level initially agreed.

The granting of a sub-let does not remove or set aside any of the responsibilities of the

tenant regarding the conduct of the tenancy, irrespective of any arrangement the tenant may have with the sub-tenant. The tenant remains responsible for ensuring that the rent is paid and that all other tenancy conditions are adhered to.

Sub-tenants are qualifying occupiers under the terms of the Housing (Scotland) Act 2001, Section 14 (6) and must be party to court proceedings raised against the tenant.

4 LODGERS

Tenants wishing to take in a lodger must make such an application in writing. The lodger cannot move in without our written consent. We will not withhold permission unreasonably. We will provide a standard application form on which a request for permission to take in a lodger can be made.

The tenant must provide the following information;

- The proposed duration of the lodging arrangement.
- The amount of any deposit and the rent charges to be paid by the lodger.
- The full name, date of birth and current address of the proposed lodger.

There are no residency tests for either the tenant or the proposed lodger.

Reasonable grounds for the Association to refuse permission are undernoted. This list is not exhaustive and we may use other reasons provided we consider them to be reasonable.

- A Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Housing (Scotland) Act 2001.
- The Association has already obtained an order for recovery of possession of the house.
- It appears to the Association that the tenant is to receive a payment for the lodging arrangement, which is other than a reasonable rent or a reasonable and returnable deposit.
- The request would lead to overcrowding.
- The Association proposes to carry out work to the house or building which would affect the accommodation likely to be used by the lodger or other person who would reside in the house as a result of the transaction.

The Association will respond in writing to requests to take in a lodger within one month, either approving or refusing permission for the proposed lodger to move in. If we fail to respond within one month of receipt of an application then the Association is taken to have consented to the application.

Lodgers are qualifying occupiers under the terms of the Housing (Scotland) Act 2001,

Section 14 (6) and must be party to court proceedings raised against the tenant.

5 JOINT TENANCIES

A request to create a joint tenancy is where the tenancy was originally in a sole name but that sole tenant now wishes to add another person to their tenancy.

The current sole tenant and new intended joint tenant must make such an application in writing. The joint tenancy cannot be created without our written consent. We will not refuse a request for a joint tenancy unreasonably. We will provide a standard application form on which a request for a joint tenancy can be made.

The tenant must provide the following information;

- The full name, date of birth and relationship to the tenant of the proposed joint tenant.

There is a residency test which must be satisfied which is that the person who wishes to become the joint tenant must have been living in the property and using it as their only or principal home for at least 12 months prior to the date of the application to become a joint tenant. Furthermore, Abrohill Housing Association must have been informed that the person the current sole tenant wishes to become a joint tenant has moved into the property and have granted permission for that residence. The 12 month qualifying period only starts when the Association has been notified. The residency test applies regardless of the relationship between the tenant and intended joint tenant, and includes spouses, civil partners and co-habiting partners.

Reasonable grounds for the Association to refuse permission are undernoted. This list is not exhaustive and we may use other reasons provided we consider them to be reasonable.

- A Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Housing (Scotland) Act 2001.
- The Association has already obtained an order for recovery of possession of the house.
- The request would lead to overcrowding.
- The Association proposes to carry out work to the house or building which would affect the occupation of the property.

There is no statutory timeframe within which we must respond to requests for a joint tenancy, however, we will respond to requests within one month.

When permission for a joint tenancy is granted the tenancy does not end and a new tenancy does not begin. Rather the tenancy continues but the tenant changes (from sole names to joint names) from a specified date. No new tenancy agreement is required. The application for a joint tenancy and the Association’s letter granting

permission is appended to the original tenancy agreement.

The current tenant and proposed joint tenant will be asked to attend a meeting to discuss the content of the tenancy agreement and make them aware of their rights and responsibilities in relation to the tenancy. The current tenant and new joint tenant will be asked to sign a letter confirming that they understand that the tenancy will change from a specified date and this will also be appended to the original tenancy agreement.

6 MUTUAL EXCHANGES

A mutual exchange is a swap of properties between two (or occasionally more) social housing tenants. All social housing tenants in the UK have a right to apply for a mutual exchange with an identified other party. A mutual exchange can take place between two tenants of Abrohill Housing Association, or between a tenant of Abrohill Housing Association and a tenant of any other social landlord.

Abrohill Housing Association recognises the role that mutual exchanges can apply in supporting housing mobility, meeting housing need and meeting housing aspirations.

An application for a mutual exchange must be made in writing. A mutual exchange cannot go ahead without our consent, or that of the other landlord if applicable. We will not refuse a request for a mutual exchange unreasonably. We will provide a standard application form on which a request for a mutual exchange can be made.

There is no residency test for parties to a mutual exchange.

Reasonable grounds for the Association to refuse permission are undernoted, these apply to all parties in the exchange and not just to tenants of Abrohill Housing Association. This list is not exhaustive and we may use other reasons provided we consider them to be reasonable.

- A Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Housing (Scotland) Act 2001.
- The Association has already obtained an order for recovery of possession of the house.
- The house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the house and, if the exchange took place, there would no longer be a person with such special needs occupying the house.
- The request would lead to overcrowding.
- The exchange would lead to significant under-occupation of one or more properties.
- The house is unsuitable for the needs of the tenant’s household.
- It appears to the Association that one or other tenant is to receive a payment for the mutual exchange.

The Association will respond in writing to requests for a mutual exchange within one month, either approving or refusing permission for the mutual exchange to proceed. If we fail to respond within one month of receipt of an application then the Association is taken to have consented to the application.

We would not normally give consent for a mutual exchange which would result in a Abronhill Housing Association property being underoccupied by more than one bedroom.

We will seek a landlord reference for any parties to a mutual exchange who are not existing Abronhill Housing Association tenants.

If the exchange is approved, the landlord(s) will agree an appropriate date for the mutual exchange in consultation with the exchanging tenants.

Incoming tenants accept the fixtures and fittings of the house as seen.

The incoming tenant signs a new tenancy agreement and the tenancy of the outgoing tenant is terminated.

In cases of mutual exchanges involving more than two tenancies all of the same conditions apply.

7 TIMING & INFORMATION

All tenants were informed of the changes to this area of law, and in particular, the requirement that the Association must be notified of who is resident in the property. This information was supplied individually to all tenants before 1 November 2018, thereby allowing tenants to meet the 12 month qualification period prior to the change in law taking effect. Individuals becoming tenants on or after 1 November 2018 were also notified of the changes. From 1 May 2019 the changes are incorporated in the Scottish Secure Tenancy Agreement as per Scottish Government instruction.

8 DATA PROTECTION

Abronhill Housing Association will treat tenants' personal data in line with its obligations under the current General Data Protection Regulation and its own Privacy Statement. Information regarding how tenants' data will be used and the basis for processing data is provided in the Association's Privacy Notice.

9 EQUAL OPPORTUNITIES

The Association will seek to ensure that in implementing this policy that no group, organisation or individual will receive less favourable treatment or be discriminated against regardless of their race, colour, ethnic or national origin, language, belief, age, sex, sexual orientation, gender realignment, disability, marital status, pregnancy or maternity. We will positively endeavour to achieve fair outcomes for all.

10 COMPLAINTS

Any tenant who feels aggrieved by their treatment under this policy can ask for a copy of the Association's Complaints Handling Procedure which is available on the Association's website or from our office. Any tenant making a complaint will be advised of their right to complain to the Scottish Public Services Ombudsman.

However, if you are unhappy about our refusal to grant permission for any of the actions covered by this policy you have the right to make application to the Sheriff.