



## **Transfer/Assignment/Succession of Tenancy Policy**

<b>DATE OF REVIEW</b>	<b>18 July 2017</b>
<b>REVIEWED BY</b>	<b>HOUSING MANAGEMENT SUB COMMITTEE MEETING</b>
<b>NEXT REVIEW DATE</b>	<b>July 2020</b>

**Transfer/Assignment of Tenancy**

**Succession of Tenancy**

## **TRANSFER/ASSIGNATION OF TENANCY**

### **1. INTRODUCTION**

Cathcart & District Housing Association operates to meet its statutory obligations and the standards as set down within, The Scottish Housing Regulator Charter and homelessness functions, in the implementation of all its policies. CDHA continuously seeks to meet its own Corporate Aims through the development and implementation of its policies. All CDHA's policies are operated to achieve its Strategic Objectives set out in its most recent Business Management Plan.

### **2. EQUALITIES AND DIVERSITY**

CDHA is committed to providing equality of opportunity to all persons or groups within its area of operations in every aspect of its activities. In operating this policy CDHA will endeavour to ensure equality of opportunity for all at all times and in all circumstances. In line with this commitment to equal opportunities, this policy and any summary or information leaflet can be made available free of charge in a variety of formats including large print, translated into another language or on audio tape.

### **3. ACCESS TO POLICY INFORMATION**

CDHA will ensure that its policies are made fully available to all tenants, applicants, members, persons or groups within its areas. Every effort will be made by CDHA to support access and promote awareness of its policies by developing summaries, guidance and information leaflets as appropriate.

### **4. TENANT INVOLVEMENT AND CONSULTATION**

CDHA is committed to meeting the requirements of the Housing (Scotland) Act 2001 in all of its policies. It will involve tenants in the development of its policies and seek feed back in appropriate circumstances. It will ensure at all times that any material change to services affecting tenants in this and other policies will be the subject of consultation.

### **5. POLICY MONITORING**

CDHA is committed to ensuring that adequate monitoring of the implementation of its policies is undertaken. The Management Committee will achieve this through regular review; customer/tenant feed back surveys, and regular consultation with tenant/resident groups.

### **6. RISK MANAGEMENT AND ASSESSMENT**

CDHA has a detailed Risk Management Policy in place and it will assess the risks to the Association in the implementation of each of its policies as part of its risk management strategy.

### **7. PROCEDURES**

CDHA will develop a detailed set of back up procedures identifying actions, roles and responsibilities in implementing its policies. These procedures will be subject to regular review and audit.

## **8. TRAINING**

CDHA will ensure that its staff is properly trained in terms of their knowledge and understanding of statutory requirements and outcomes against the Charter pertaining to its policies. It will ensure that appropriate staff is kept up to date with all procedures pertaining to the implementation of policies. The Management Committee and Sub-Committees will have access to training to ensure that they can maintain a sufficient overview of the policy and procedures.

## **9. PURPOSE OF THIS POLICY**

The purpose of this policy is to outline the Association's requirement to accept and consider any application for the assignation/transfer/succession of tenancy as set out in the Housing (Scotland) Act 2001, and detailed within section 4.2 and 10.3 of the Association's Scottish Secure Tenancy Agreement.

## **10. LEGAL REQUIREMENTS**

The provision relating to transfer/assignation/succession of a Scottish Secure Tenancy is contained in Section 32, Part 2 of Schedule 5 of the Housing (Scotland) Act 2001. The law states that a tenant CDHA shall not transfer/assign/succeed to a tenancy except with the written consent of the landlord and in the case of assignation where the house has been the assignee's only or principal home throughout the period of six months ending with the date of the application for assignation/transfer/succession. The Association can only refuse consent only if it has reasonable grounds for doing so. This Policy is designed in compliance with the following:

The Housing (Scotland) Act 2001  
The Housing (Scotland) Act 2001 (Scottish Secure Tenant etc.) Order 2002  
Scottish Secure Tenancy Agreement  
Matrimonial Homes (Family Protection) (Scotland) Act 1981  
The Scottish Social Housing Charter  
The Civil Partnership Act 2004

## **11. ELIGIBILITY CRITERIA**

- Each written request for transfer of tenancy will be considered by the Association on its individual merits.
- All tenants of the property (if a joint tenancy) and/or any person who has occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 must agree in writing to the assignation/transfer request.
- The rent account of the principal tenant must be up to date before an assignation/transfer of tenancy request is approved. In addition, there should be no outstanding housing related charges such as former tenant arrears, tenant recharges or legal fees.
- Assignation/Transfer of Tenancy will only be considered if the proposed assignee:
  - a. is at least 16 years old; and
  - b. is a close relative of the tenant or has some other close association with the tenant; and
  - c. the property is the only or principal home of the person to whom the tenant wants to assign the tenancy and has been for at least 6 months before the date of the written request.

## **12. REASONS WHY CONSENT MAY BE WITHHELD**

With regard to Scottish Secure Tenancies, the Association may refuse such consent only if it has reasonable grounds for doing so. Grounds for refusal are as follows: -

- a. A notice under Section 14 (2) of the 2001 Act has been served on the existing tenant specifying a Ground set out in paragraphs 1 to 7 of Schedule 2 of the 2001 Act.
- b. An order for recovery of possession of the house has been made against the tenant under Section 16 (2) of the 2001 Act.
- c. It appears to the Association that a payment other than a rent which, in the Association's opinion, is reasonable, returnable at the termination of the Assignment/Transfer of Tenancy and given as security for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents has been or is to be received by the tenant as a price for the Assignment.
- d. The Assignment/Transfer of Tenancy will lead to overcrowding
- e. The Association proposes to carry out work in the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the assignee who would reside in the house as a result of the Assignment.
- f. The Assignment/Transfer of Tenancy would breach a Local Letting Initiative.
- g. Where the proposed assignee has pursued a course of antisocial conduct, or has been convicted of using a previous tenancy for illegal or immoral purposes. Or has had an interim or full ASBO granted against them or a member of their household within the last three years.
- h. The Assignor has outstanding debt owed to the Association in terms of their tenancy.
- i. Anyone who has been violent or has used abusive or threatening behaviour to an Association member of staff.
- j. Anyone who has an active Right to Buy Application.
- k. The tenant would be transferring tenancy rights to a property with special design features and the proposed assignee for such accommodation does not have an appropriate housing need.
- l. After inspection, it is clear that there are rechargeable repairs outstanding or if it is clear that there is an outstanding rent arrears on the rent account.

The above contains only some examples of where requests for transfer of tenancy may be considered to be unreasonable. The list is not intended to be exhaustive and each case will be considered on the individual circumstances involved.

## **13. ASSESSMENT OF APPLICATION**

- A tenant wishing to assign/transfer a tenancy must seek the written consent of the Association and in the case of a Scottish Secure Tenancy, the tenant must make a written application to the Association for consent giving details of the proposed transaction and, in particular, of any payment which has been or is to be received by the tenant in consideration of the transaction.

- The Association may then issue its written consent or refuse consent provided that it is not refused unreasonably. Where the Association refuses consent, it must give reasons for its refusal and intimate the consent or the refusal in writing within one month of receipt of the application. If the Association fails to respond in writing to an application for permission to assign/transfer within one month of the receipt of the application, then the Association will be taken to have consented to the application
- The discretion to accept a request for transfer of tenancy or otherwise under this policy rests with the Director.
- The Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc.) clearly states that if a tenant had the preserved Right to Buy, this ends with the assignation. This means that the tenancy is assigned/transferred with no preserved Right to Buy.
- There may be circumstances where the Association will not grant assignation of the tenancy to the existing member of the household, but make an offer of an alternative Housing Association property more suited to the individual housing circumstances involved.

#### **14. NOTIFICATION OF DECISION**

The Association will notify the tenant in writing of our decision within one month of receiving their application.

Where consent has been refused the Association will advise the applicant of the reasons for refusal, what action should be taken to address the reasons for refusal and the applicants rights to appeal.

#### **15. TRANSFER OF TENANCY OF MATRIMONIAL HOME**

This is a compulsory assignation that can be imposed in appropriate circumstances by the courts, for example, where there is a history of domestic violence. The court does not require the consent of either the landlord or the principal tenant. If there is a joint tenancy, the court has the power to grant the tenancy to one party only. 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 remain the responsibility of the spouse who was the original tenant.

#### **16. APPEALS PROCESS**

Any appeal on decision where consent has been refused should be made initially to the Director. Where the Director upholds the original decision, the tenant can pursue any further grievance through the Association's Complaints Procedure. This does not prejudice the tenant's right to raise a Court action under Part 2 of Schedule 5 of the Housing (Scotland) Act 2001.

### **SUCCESSION OF TENANCY**

#### **1. POLICY ON SUCCESSION OF TENANCY**

The right of Succession to Scottish Secure tenancies is contained within Section 7 of the tenancy agreement, as provided for by the Housing (Scotland) Act 2001, section 22 and schedule 3.

In all claims for succession, a request must be received within 28 days of the death of the tenant. The Association will aim to respond to any Succession application in writing within 10 working days and we will endeavour to make our decision regarding an application within 28 days of receipt of the application. If an application is refused, the Association will advise the applicant of the reasons for refusal and the applicant's rights to appeal.

If the person applying is not included in the Association's household records, detailed documentation will be required to verify residence before an application is accepted. If under occupation will result after award of a succession then the Association will offer rehousing advice if required.

The act defines 3 levels of priority for succession:-

**Level 1** - On the death of a tenant the tenancy shall pass to the tenant's husband or wife or co- habitee if the house was their only or principal home on the tenants death, with the knowledge and consent of the Association.

In the case of a co-habitee, he or she must also have occupied the house as his/her only or principal home for at least 6 months immediately before your death. If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If agreement over Succession cannot be reached between family members then the Association will decide who succeeds to the tenancy.

In the event of a joint tenancy the tenancy shall pass to the surviving tenant, again providing they are occupying the property as their principal home at the time, with the knowledge and consent of the Association.

**Level 2** - In a situation where 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 at the date of death.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If agreement over Succession cannot be reached between family members then the Association will decide who succeeds to the tenancy.

**Level 3** - 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 at the date of death;
- he or she gave up another only or principal home before the death of the tenant.
- he or she is providing, or has provided, care for the tenant or a member of the tenant's family.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If agreement over Succession cannot be reached between family members then the Association will decide who succeeds to the tenancy.

The provisions noted below are contained within the tenancy agreement and are a summary of the law which is contained within Section 22 of the Housing (Scotland) Act 2001. This summary does not alter that law.

Where the house has been designed or substantially adapted for a person with special needs

then paragraph 5 of Schedule 3 of the Housing Act specifies that only spouses, co-habitees, joint tenants or persons with special needs can succeed to that tenancy. If at the first succession someone qualifies for the tenancy at Level Two or Level Three and does not have special needs requiring accommodation of that kind, we have the right to terminate the tenancy and offer that person suitable alternative accommodation. Where in the case of such a property, at the point of a second succession someone qualifies at Level One, Level Two or Level Three and does not have special needs requiring accommodation of that kind, we have the right to terminate the tenancy and offer that person suitable alternative accommodation.

In the event of the death of the tenant, where there is no eligible successor, the Association will allow a reasonable period of time for any member of the household remaining to obtain alternative accommodation.

- 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.
- 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.
- Where the landlord is a registered social landlord which is a co-operative housing association the qualifying person must also apply for membership and be accepted as a member of the association within a four week period of the tenant's death or notification of right to succeed. If the qualifying person fails to do so or the association refuses the application for membership, the person will be treated as having declined the tenancy at the time of the tenant's death.

## **2. APPEALS PROCEDURE**

The Housing Act does not allow a right of appeal against succession decisions. However, any applicant who feels aggrieved by their treatment under the Succession policy has the right of appeal to the Director, and if not satisfied, to the Association's Housing Management Sub-Committee.

Appeals should be made in writing within 10 working days of the notification, and should be responded to within a further 10 working days.



**SUCCESSION OF TENANCY**

**This form when completed, is to be returned to the Housing Association Office**

The issue of this form does not necessarily mean that the applicant qualifies for succession to tenancy.

**Answers must be given to all questions**

1. Address of house: .....

2. Number of apartments: .....

Full name of present tenant: .....

Date of present tenant's death: .....

Name of applicant applying for successions and relationship to tenant

NAME	RELATIONSHIP	D.O.B
.....	.....	.....

State whether married, single, widow, widower, etc: .....

If succession is granted, how many people will live in the house (including applicant) .....

Relationship with and dates of birth of such persons

Name	Relationship	D.O.B
.....	.....	.....
.....	.....	.....

State how long you have been resident in house

From: ..... TO : .....

If not always resident in house give date of letter giving permission to reside (if any) ....., or two pieces of documentary evidence showing proof of residence such as a bank statement, wage slip etc

**SIGNATURE OF APPLICANT:** .....

**DATE :** .....



FOR OFFICE USE ONLY:



**SUCCESSION OF TENANCY MANDATE**

I ..... Hereby  
acknowledge

that I have succeeded to the tenancy of the dwelling house at :-

.....  
.....  
.....  
.....

following the death of .....on  
.....date.

I acknowledge that the date of succession will be.....

I acknowledge that the succession is defined as a Level 1/ Level 2 / Level 3 (\* **Delete as necessary**) succession within the terms of the tenancy agreement. I acknowledge that this succession is the first / second (\* **Delete as necessary**) in terms of this tenancy and therefore:-

**\* Delete as necessary**

- that there will be no further right of succession
- that there will be one further right of succession

Signature of Successor: ..... Date:

..... Signed on

behalf of C&DHA .....

Date:.....

Signature of Witness: ..... Date:

.....

**17. POLICY REVIEW**

This policy will be reviewed by July 2020 unless an earlier review is required due to legislative changes.

