

**West of Scotland Housing Association**

**Housing Service Policy**

<b>Subject</b>	<b>Joint Tenancies</b>
<b>Implementation Date</b>	1 <sup>st</sup> May 2014
<b>Reviewed</b>	1 <sup>st</sup> February 2005 1 <sup>st</sup> April 2003
<b>Relevant legislation</b>	<b>Housing (Scotland) Act 2001</b> Data Protection Act 1998 Matrimonial Homes (Family Protection) (Scotland) Act 1981 Civil Partnership Act 2004 Equality Act 2010 Family Law (Scotland) Act 2006 Housing (Scotland) Act 2006 - Part 5 Licensing of Houses in Multiple Occupation Housing (Scotland) Act 2014 – Section 12
<b>Relevant policies</b>	<b>Succession, Abandonment</b>
<b>Relevant clauses of Tenancy Agreement</b>	1.16,4.1,4.2,6.9
<b>Contact Person</b>	<b>Kirsty Sweeney</b> <b>Ewen Gilmour</b>

## **1. Equal Opportunities**

West of Scotland Housing Association will treat all individuals or groups equally, avoiding unfair discrimination on any grounds in relation to Joint Tenancies in accordance with the Equal Opportunities Policy.

## **2. Policy Aims**

In producing this policy, West of Scotland Housing Association's aim is to provide a clear guide to how applications for a joint tenancy will be dealt with. In addition the policy will explain how terminations of part of a joint tenancy will be dealt with.

## **3. Eligibility and Legal Framework**

As well as the right to a sole tenancy under a Scottish Secure Tenancy any tenant is entitled to a joint tenancy with one or more people, but the house must be, at the start of the joint tenancy, the only or principle home of all the tenants. In addition, joint tenants have the right to terminate their part of their tenancy.

These rights are set out in the Housing (Scotland) Act 2001 Section 11(5) and 13. Landlords may only refuse to give their consent to an application for a joint tenancy if there are reasonable grounds to do so.

It is emphasised that disclosure of information either by the Association or other organisations should conform to requirements of the Data Protection Act 1998.

Section 12 of the Housing (Scotland) Act 2014 introduces a requirement for the house to be the prospective joint tenant's only or principal home at the date of application and for a period of 12 months prior to the date of the application. It also provides that, with regard to an application for a person to be included with the tenant as joint tenants, the 12 month qualifying period may only be considered by us if prior notice was given by the prospective joint tenant or any other person who was the tenant of the house in question when the notice was given, that the house in question was the person's only or principal home. At the time of writing this policy, section 12 is not yet in force. Following the commencement of all or part of section 12 of the Housing (Scotland) Act, this policy shall be updated automatically to reflect the terms of the statutory provision in force without the need for further amendment of this policy.

### **3.1 Principal Home**

Although principal home is not defined in the Housing (Scotland) Act 2001, a house will be considered to be a person's principal home where they have a substantial connection to it. Even when someone is temporarily absent from the property, a house will be deemed to be their principal home if a person intends to return and can display some evidence of that intention, e.g. at university, serving in the armed forces.

The Association recognises that situations are dependant on every individual's circumstances and each application requires to be assessed on its merits.

## **4. Applying for a Joint Tenancy**

Scottish secure tenants applying for a joint tenancy with one or more people must do so in writing. An application form is available from one of the Association's Offices.

We will then assess the application, and will notify the tenant of our decision in writing within 28 days of receiving the written request.

There is no limit to the number of occasions on which a joint tenant can be created and no limit to the number of joint tenants there can be. However, if three or more people apply to be joint tenants and they are not related, the let must be dealt with as a House in Multiple Occupation (HMO). Therefore, this must be discussed with a Senior Officer.

Where there is a spouse or a Civil Partner who is not currently a joint tenant (non-entitled) and who is not applying for a joint tenancy, they must give written permission to any other joint tenancy application as they have tenancy rights.

Any application received without the written permission of the spouse or civil partner will be invalid.

## 5. Approving or Refusing a Joint Tenancy

The circumstances behind every application will be different so we will assess each one received on its own merits. We will look on applications positively. We will only refuse permission where there are reasonable grounds to do so. There is no definitive list of reasonable grounds for refusal but would include:

- A Notice of Proceedings that specifies any grounds 1 to 7 (schedule 2) has been served on the tenant
- An order for recovery of possession of the property has been made against the tenant
- Creating a joint tenancy would result in statutory overcrowding
- If the tenant or any proposed joint tenant has a history of serious anti-social behaviour
- Where the house is not the proposed joint tenant (s) principle home and they do not intend to move in
- The proposed joint tenant doesn't meet the eligibility criteria for the property and would be contrary to the Association's allocation policy. e.g. sheltered housing
- There is no written permission from the non-entitled spouse or civil partner.
- Following introduction of Section 12 of the Housing (Scotland) Act 2014 the qualifying period criteria has not been met. Please refer to **Eligibility and Legal Framework** above.

This list is not exhaustive. There may be other circumstances under which we may refuse an application, for example if the proposed tenant owes their current/ former landlord a debt greater than one months rent and has not adhered to a reasonable arrangement for at least three months. However, the reason for the request for a joint tenancy and the circumstances surrounding the arrear will be taken into account when the application is being assessed.

## 6. Preserved Right to Buy

If a tenant has a preserved right to buy that is a right which the person enjoys and this right is not transferred or shared with any new joint tenant/s. Therefore, the new joint tenant/s cannot apply to buy the property on their own as they have no preserved right.

## **7. Appeals**

If an application for a Joint Tenancy is refused, tenants have the right to appeal this decision.

There are three stages to the appeals process:

Stage 1 – Appeals should be made in writing to the Neighbourhood Services Manager, who will review the original decision and reply within 28 days of the appeal.

Stage 2 – If the tenant is still unhappy with the decision, the Director of Operations can be asked to review the decision

Step 3- If the Director of Operations does not overturn the original decision, and the tenant is still unhappy, they can ask that the Association's Appeals Panel consider your application. This is made up of three of the Association's Committee members. The tenant will then be given the opportunity to present the case to the committee members.

## **8. Terminating one part of a Joint Tenancy**

A joint tenant who wishes to terminate their share of a tenancy must do so in writing. The tenant must give 4 weeks written notice of their intention to terminate to (i) the Association, and (ii) any other joint tenant(s). Where the joint tenants are a husband or wife or couples who have a civil partnership written consent will be required from the remaining tenant before we consider the request.

Any termination received without the written permission of the joint tenant will be invalid.

Tenants wishing to terminate their part of a joint tenancy and their rights to the matrimonial home should contact a Solicitor for further advice. It is good advice to have this notarised by a solicitor, otherwise the rights to the matrimonial home will remain.

We will then deal with this termination and contact the terminating tenant.

### **8.1 Matrimonial Home**

Even if the persons name is not on the tenancy agreement, they automatically acquire the right to live in the family home when they get married or register a civil partnership. If their name is not on the tenancy agreement they be a 'non-entitled spouse' or 'non-entitled partner'. The right to occupy the home will last either until:

- The couple divorce or dissolve your civil partnership,
- One person leaves the family home and does not return for two years or more. They will only lose their rights in this way if, during the two years, they did not live with their partner/spouse or live in the family home. If they left the family home before 4 May 2006 then their right to return will last until they get divorced or 'renounce' (give up) their right to live there.
- Where the tenants lose their tenancy rights i.e. eviction

It is not always easy to define matrimonial home and the sheriff court may have to grant a declarator. This is a court order which declares a person's rights to a property but does not enforce them.

## **9. Termination of Joint Tenancies and Arrears**

When one joint tenant ends their tenancy they will not be held responsible for any arrears or other housing debt which accrues after that date. However, the Association reserves the right to pursue the former tenant for any arrears or other housing debt, which, accrued before the termination date.

## **10. Abandonment and Successions**

Please refer to the Association's Abandonment Policy and Succession Policy in relation to how these effect joint tenancies.

## **11. Monitoring & Review**

The Association will hold monitoring information on the number of applications for joint tenancies and the outcomes. In addition, areas to be monitored will include appeals and complaints.

This policy will be reviewed every three years, with the next review being due in May 2017. An interim review may take place in the event of changes to good practice, regulatory or legal requirements.