

1.0 CONTEXT

- 1.1. It is a term of every Scottish Secure Tenancy that the Tenant may assign possession of the house subject to certain conditions.
- 1.2. The Housing (Scotland) Act 2001, and more recently the Housing (Scotland) Act 2014, make provisions for assignation of tenancy and defines the circumstances in which it can be used.

2.0 AIMS

- 2.1 To ensure equality of opportunity and consistency of approach in dealing with requests from Tenants to assign their tenancy to another person.
- 2.2 To ensure compliance with legislation, guiding standards and best practice.
- 2.3 To mitigate risk.

3.0 DEFINITIONS

- 3.1 *Assignment of Tenancy* is the legal term used when a tenant passes on their Scottish Secure Tenancy, and tenancy rights and obligations to another person, known as the assignee.
- 3.2 *Assignee* – The person to whom the property is legally transferred by the principal tenant. Housing (Scotland) Act 2014 introduced a mandatory 12-month qualifying period of residence for assignees.
- 3.3 *One Month* is the term used in the legislation. For the purposes of this policy and in line with the tenancy agreement, GWHA will stipulate 28 days.

4.0 POLICY

4.1 General

- 4.1.1 It is a term of every Scottish Secure Tenancy that the tenant may assign possession of the house only:
 - i. with GWHA's consent in writing; and
 - ii. where the Tenant has lived at the property as their only or principal home for a minimum of 12 month's prior; and
 - iii. where the house has been the assignee's only or principal home throughout the period of 12 months ending with the date of the application for GWHA's consent to the assignation.
- 4.1.2 The existing tenancy will be assigned to the proposed new tenant in the following circumstances:
 - i. he/she is the tenant's spouse or cohabitee and the property has been his/her only or principal home for a minimum of 12 months prior to the application.
 - ii. he/she is a member of the tenant's family who is aged at least 16 years and where the house has been his/her only or principal home for a minimum of 12 months prior to the application
- 4.1.3 The Assignee will inherit the existing tenancy conditions, rights, obligations and responsibilities including date of entry, from the original tenant. As such, the Assignee will be required to sign an Addendum to the Tenancy, as opposed to signing a new Tenancy Agreement.

4.2 Assignment Requests

- 4.2.1 In all instances GWHA must be aware of the person's residence in the property. The 12-month period of residence is a mandatory legislative requirement, and commences only from the date GWHA was notified that the house in question was the person's only or principal home. Consistent with legal advice, GWHA requires such notification in writing and will acknowledge receipt of any notification.
- 4.2.2 Tenants who wish to pursue an application for assignation of tenancy must make a written application to GWHA. To ensure a request is expedited and all information is available for GWHA's consideration, a tenant who wishes to pursue an application will be encouraged to complete form AT1 – Application for Assignation of Tenancy. In all instances an application must

provide details of the proposed transaction, and of any payment which has been or is to be received by the tenant in reference to the assignment.

- 4.2.3 GWHA will acknowledge all written requests for assignment of tenancy within 3 working days. Confirmation of consent or refusal (with reasons) for assignment of tenancy will be sent to the Tenant in writing within 28 days of receipt of the application. In instances where insufficient information has been provided for GWHA to reach a decision, the Tenant will be notified that the 28 day response timescale will commence only from the date in which all information has been received, and that permission is refused in the meantime.
- 4.2.4 If GWHA fails to respond within 28 days, legislation stipulates it is to be taken to have consented to the application.

4.3 Exceptions

- 4.3.1 GWHA is entitled to refuse consent for assignment of tenancy if it has reasonable grounds for doing so. The following circumstances would constitute reasonable grounds for refusal, although this list is not exhaustive:
- i. A Notice of Proceedings for Recovery of Possession has been served on the tenant, under any of the grounds 1-7 of Schedule 2;
 - ii. An order for recovery of possession of the house has been granted to GWHA in respect of the tenancy;
 - iii. Where it appears to GWHA that a financial inducement (a payment other than reasonable rent or deposit given as security for the subtenant's obligations for the associated tenancy costs ie. Gas, electricity, telephone, home contents etc.) has been received by the Tenant in consideration of the assignment;
 - iv. The assignment would lead to overcrowding within the property;
 - v. GWHA proposes to carry out work on the house, or in the building of which is forms part, where the proposed works will affect the accommodation.
 - vi. Where GWHA would not give the assignee reasonable preference under the Housing Allocations Policy.
 - vii. Where, by GWHA's definition¹, the assignment would result in the home being under-occupied.
 - viii. There are outstanding rent arrears, exceeding the value of one month's rent or rechargeable repairs.
 - ix. The proposed new Tenant (Assignee) has a history of anti-social behaviour, or has been the subject of legal action in respect of a previous tenancy within the previous three years.

4.4 Specially Adapted Accommodation

- 4.4.1 GWHA has a small number of properties that have been designed specifically for people with a particular housing need, for example: wheelchair users. If the assignee, or a permanent member of the assignee's household, does not require accommodation of the nature described, the application for the tenancy will be refused on the grounds that GWHA would not give the assignee reasonable preference under the Housing Allocations Policy. GWHA has a duty to offer suitable alternative accommodation where this is available. The Assignee's household will be assessed in accordance with the criteria outlined within the Housing Allocations policy.

¹ GWHA's Housing Allocation's Policy outlines the occupancy standard

5.0 FEEDBACK, APPEALS AND COMPLAINTS

5.1 Feedback

- 5.1.1 GWHHA Tenants and other customers may provide feedback about this document by emailing admin@glasgowwestha.co.uk

5.2 Appeals and Complaints

- 5.2.1 Applicants with a grievance arising from their application for assignment of tenancy will be considered in accordance with GWHHA's Comments and Complaints Policy.
- 5.2.2 Once the Association's Comments and Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of assignment.
- 5.2.3 The Housing (Scotland) Act 2001, Schedule 5, Part 2 gives Tenants a statutory right to appeal against a refusal for assignment of tenancy to the Sheriff by way of summary application. Tenants are advised to seek legal advice, or assistance from an organisation such as Shelter Scotland or Citizen's Advice Scotland.

6.0 REVIEW

- 6.1 This policy will be reviewed every 5 years, or sooner, subject to a change in legislation or circumstance.
- 6.2 In the event of any conflict between this policy and legislation, the latter will always prevail.

7.0 DELEGATED AUTHORITY

- 7.1 Delegated authority is granted by the Management Committee to the Chief Executive and Staff to implement this Policy and the associated procedures.