

## TENANCY MANAGEMENT POLICY

**Policy Classification: Management**

**Status: Approved**

<b>Policy Lead:</b>	Director of Housing & Care Services
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<b>Review Due Date:</b>	June 2023
<b>Review Period:</b>	3 years unless required earlier due to changes in the law, regulation, best practice or requirement of Eildon

## REFERENCE PAGE

<b>Document Title:</b>	Tenancy Management Policy
<b>Aim:</b>	To describe our approach to tenant requests for assignation, sublet, joint tenancies, succession, mutual exchange and lodgers.
<b>Objective:</b>	3 The Eildon Group will ensure the delivery of high quality, responsive and affordable housing and support services
<b>Scope of Policy:</b>	Customers
<b>Nominated Officer:</b>	Housing Services Manager
<b>Approval Source:</b>	Executive Team
<b>Legal &amp; Regulatory References:</b>	<ul style="list-style-type: none"> <li>• Matrimonial Homes (Family Protection) (Scotland) Act 1981</li> <li>• Housing (Scotland) Act 2001</li> <li>• Scottish Social Housing Charter</li> <li>• SEDD Circular 6/2002, Housing (Scotland) Act 2001 – Scottish Secure and Short Scottish Secure Tenancy</li> <li>• Housing (Scotland) Act 2014</li> <li>• Scottish Government Guidance for Social Landlords (2019) – Scottish secure tenancies and short Scottish secure tenancies - assignation, subletting, joint tenancies and succession</li> </ul>

<p><b>Procedural References:</b></p>	<p>This Policy has been considered alongside other Eildon Polices:</p> <ul style="list-style-type: none"> <li>• Allocations Policy</li> <li>• Void Management Policy</li> <li>• Preventing and Responding to Domestic Abuse</li> </ul> <p>Sitting alongside this policy is a set of operational procedures:</p> <ul style="list-style-type: none"> <li>• Assignment procedure</li> <li>• Subletting procedure</li> <li>• Joint tenancies procedure</li> <li>• Succession procedure</li> <li>• Mutual exchange procedure</li> <li>• Lodger procedure</li> </ul>
<p><b>Consultation Completed:</b></p>	<p>Customer Panel and Housing Services staff</p>
<p><b>Risk Implications:</b></p>	<p>1- Existing policy, minimal change</p>
<p><b>Equalities Assessment:</b></p>	<p>All Eildon policies and key documents are developed with the clear objective of ensuring that they do not discriminate against any person and have negative impacts for equality groups. We will always welcome comments on the impact of a policy on particular groups of people in respect of, but not limited to, age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children’s rights and wellbeing.</p>
<p><b>Accessibility:</b></p>	<p>Accessible electronically/online and in print. All documents can be translated and made available in audio, braille and large print versions upon request.</p>

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## **1. INTRODUCTION & LEGISLATIVE BACKGROUND**

- 1.1 Under the Scottish Secure Tenancy tenants have certain rights, some of these are ones they can request such as assignation, sub-letting and a joint tenancy, whilst others are clear rights which apply in certain situations such as succession.
- 1.2 The Housing (Scotland) Act 2014 introduced an occupancy requirement for certain tenant rights, and a requirement that the landlord has to have been notified of the change in the household.
- 1.3 Our Scottish Secure and Short Scottish Secure Tenancy Agreements include a specific section on tenant responsibilities for notifying us of changes in household circumstances including when anyone moves into, or out of their home.

## **2. PURPOSE**

- 2.1 The purpose of this policy is to describe Eildon's approach to succession, and tenants' requests to transfer their tenancy to a member of their household, sublet the property, take in a lodger, or exchange properties with a tenant of another Registered Social Landlord.

## **3. ASSIGNATION**

- 3.1 Assignation describes the process when a tenant (known as the principal tenant) transfers the rights and responsibilities of their tenancy to another person or persons (known as the assignee).
- 3.2 Scottish Secure tenants have a legal right to assign their tenancy to another person providing that the person has been living in the property continuously for 12 months before the date of the application and the application complies with the conditions set out in Clause 3.4.
- 3.3 Before a tenant can assign their home to someone else, they must apply in writing to us for permission to do so (using a form which is available on our website) and get our consent. All tenants of the property (if a joint tenancy) and/or any person who has an occupancy right under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 must agree in writing to the assignation request. The proposed assignee must also complete a written application form.

3.4 We will give the tenant either consent or refusal (and in the case of refusal, the reasons for refusal) in writing, within one month of receiving the assignation request. If we fail to respond within this time period, then we will be considered to have consented to the request.

3.5 Assignation will only be considered if:

- The house has been the tenant's only or principle home during the 12 months immediately before the tenant applies for written permission to pass their tenancy to someone else.
- The person the tenant wishes to pass their tenancy to must have lived at the property as their only or principal home for the 12 months before they apply.
- The tenant, joint tenant or person they wish to assign their tenancy to must have notified Eildon that the person they wish to assign the tenancy to is living in the house. The 12 month period does not start unless we have been notified that the person is living in the property as their only or principal home.
- The proposed assignee is at least 16 years old, and a close relative of the tenant, or has some close association with the tenant, and has no alternative accommodation which they could reasonably be expected to occupy.

3.6 We are likely to refuse an assignation request in the following circumstances:

- If we are taking legal action against the principal tenant for a breach of tenancy.
- Where in our opinion the assignation would result in the home being overcrowded or under occupied.
- If there is appropriate evidence that the applicant is or has been guilty of serious antisocial behavior and/or it is likely in the opinion of our staff that the assignee will cause annoyance, harm or risk to Eildon tenants, staff, or neighbours.
- If we propose to carry out work to the house which would affect the accommodation likely to be used by the assignee.
- Specially adapted accommodation or accommodation with additional services (such as supported housing) will not be eligible for assignation unless the assignee requires that type of accommodation.
- If there are rent arrears or tenancy related debt. However this requirement may be relaxed if there are urgent health or social grounds for the assignation, or the arrears are caused by delays outwith the tenant's control such as delayed payment of benefits, or the tenant has made regular payments to reduce the arrears under a formal repayment arrangement for the past six months, and the assignee agrees to pay the remainder of the arrears.

- 3.7 When an assignation is approved, we will arrange for the current tenant and the assignee to sign an Addendum to the existing Tenancy Agreement confirming the assignation.
- 3.8 Transfer 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 any existing rent arrears, which remain the responsibility of the spouse who was the original tenant.

#### **4. SUBLETTING**

- 4.1 Subletting describes when a tenant (known as the principal tenant) moves out temporarily and rents all or part of their home to another person. This person then becomes a sub-tenant of the principal tenant. We may allow tenants who are absent from home for a period of time to sublet their home in order to make the best use of the housing stock.
- 4.2 Before a tenant can sublet all or part of their home, they must apply in writing to us for written permission and get our written consent. The proposed sub-tenant must also complete a housing application form. All tenants of the property (if a joint tenancy and/or any person who has occupancy right under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 must agree in writing to the sub-let request.
- 4.3 We will give the tenant either consent or refusal (and in the case of refusal, the reasons for the refusal) in writing, within one month of receiving the sub-let request. If we fail to respond within this time period, then it is considered that we have consented to the request.

- 4.4 Subletting will only be considered if:
- the tenant has been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home; or
  - if they were not the tenant throughout that 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 us that the person who is now the tenant was living there.
- 4.5 There are no residency conditions for the person that wants to live in the property as a sub-tenant.
- 4.6 A subletting request will not be approved if we are taking legal action against the principal tenant for a breach of tenancy. In addition, a subletting request will not normally be approved if there are rent arrears or tenancy related debt. However this requirement may be relaxed if there are urgent health or social grounds for the sublet, or the arrears are caused by delays out with the tenant's control such as delayed payment of benefits and the tenant has made regular payments to reduce the arrears under a formal repayment arrangement for the past six months.
- 4.7 We must approve the proposed sub-tenant and will normally require a satisfactory report from a former landlord of the proposed sub-tenant. We may refuse a sublet request if there is appropriate evidence that the applicant is or has been guilty of serious antisocial behaviour and/or it is likely in the opinion of our staff that the proposed sub-tenant will cause annoyance, harm or risk to Eildon tenants, staff or neighbours.
- 4.8 Specially adapted accommodation of accommodation with additional services (such as supported housing) will not be eligible for sublet unless the subtenant requires this type of accommodation.
- 4.9 The request to sublet will not be approved if we propose to carry out work to the house which would affect the accommodation likely to be used by the sub-tenant.



- 4.10 If permission is granted to sub-let, it will have the following conditions:
- the sub-let must not result in overcrowding
  - any rent to be charged to the sub-tenant must be considered reasonable by us
  - the principal tenant must have a written agreement with their sub-tenant (this must be an Occupancy Agreement and not a Private Residential Tenancy Agreement)
  - we must approve the written agreement
- 4.11 There is no legal relationship between the sub-tenant and Eildon. The sub-tenant will pay rent to the principal tenant. The principal tenant will continue to be responsible for all the conditions of the tenancy, including the behaviour of the sub-tenant, and the principal tenant will normally be requested to pay their rent by Direct Debit.
- 4.12 The initial period of the sublet will be for a maximum of six months. The sub-let may be extended beyond this period at our discretion. The principal tenant must request an extension of the sub-let at least a month before it is due to come to an end.
- 4.13 The principal tenant will be responsible for ending the tenancy of their sub-tenant at the end of the sub-let agreement period or if they end their own tenancy. The principal tenant will also be responsible for any legal or other costs associated with ending the tenancy of their sub-tenant. Eildon will not be responsible for re-housing the sub-tenant in these or similar circumstances e.g. death of the principal tenant.
- 4.14 The principal tenant must keep Eildon advised at all times of their contact address.
- 4.15 If a tenant sublets all or part of their home without our written permission, we will request that they terminate the arrangement immediately, and if they fail to do so, we will take action to end their tenancy.

## 5. JOINT TENANCIES

- 5.1 Before a tenant can have someone added to their existing tenancy agreement as a joint tenant, they must apply to us for written permission to do so (using an application form available on our website) and get our written consent. The person the tenant wants to add as joint tenant, and any existing joint tenants, must apply in writing along with the tenant.
- 5.2 The proposed joint tenant must have lived at the property as their only or principal home for the 12 months before the tenant applies for them to become a joint tenant. The tenant, joint tenant or proposed joint tenant must have notified Eildon that the person they wish to become a joint tenant with is living in the house. The 12 months period does not start unless we have been told that the person is living in the property as their only or principal home. The 12 month period applies to anyone wanting to be a joint tenant including the tenant's spouse, civil partner or co-habiting partner.
- 5.3 Joint tenancies ensure that each person has exactly the same rights and responsibilities. We will normally give a joint tenancy for all new and existing tenancies when it is requested and where the notification and residency requirements (if appropriate) have been met.
- 5.4 However, there may be some circumstances when a sole tenancy may be more appropriate to protect the rights of an existing sole tenant. Therefore, before granting a joint tenancy, we will consider whether there are any issues in relation to the person's residency in the house that could affect the future sustainability of the tenancy.
- 5.5 When we agree to add someone to an existing tenancy, both parties will be required to sign an Addendum to the existing Tenancy Agreement.
- 5.6 A joint tenant can end their interest in a tenancy by giving us and the other tenant 28 days' notice, and the remaining tenant then becomes the sole tenant. We will issue a variation of tenancy notice to the remaining sole tenant.
- 5.7 If there are rent arrears, we will make clear to both joint tenants that we are entitled to pursue either or both in respect of debts that accrued during the period the tenancy was a joint tenancy. The debt will remain on the current tenancy however we may also pursue the former joint tenant on the basis that they were jointly and severally liable.

## 6. SUCCESSION TO A SCOTTISH SECURE TENANCY

- 6.1 Certain categories of persons, known as ‘qualified persons’ have the legal right to succeed to a Scottish Secure Tenancy on the death of the tenant.
- 6.2 Priority for succession is given to the tenant’s spouse, civil partner or joint tenant, provided (in all 3 cases) that the person’s only or principal home was the house in question at the time of the tenant’s death. For these persons there is no qualifying residency period.
- 6.3 If no one in the above category qualifies, or if the tenancy is declined by him/her, a person falling within the following categories (in this order) are qualified persons where the house has been their only or principal home throughout the 12 months ending in the tenant’s death:
- Partners (cohabitants of either sex and including same sex cohabitants):
  - Members of the tenant’s family aged 16 or over; and
  - Carers aged 16 or over who have given up a previous only or principal home
- 6.4 To have a right to succeed to a tenancy after living in the house for 12 months, the ‘qualifying person’ or the tenant must also have notified us that the person wishing to succeed to the tenancy is living in the house and that the house is that person’s only or principal home. The 12 month qualifying period does not start until that notice has been given. The tenant (or joint tenant) or the person who has moved into the house are responsible for notifying us that the person has moved in.
- 6.5 If the house is substantially adapted or designed for the use of persons with particular needs, only spouses, civil partners, joint tenants, partners, or qualifying persons who require adapted accommodation can succeed to tenancies in this category. Others who would have succeeded, had the house not been adapted, do not have a right to succeed to the tenancy but have a right to alternative suitable accommodation.
- 6.6 Where a spouse, civil partner, joint tenant or partner succeeds to a tenancy of a property which has adaptations they do not require, we will discuss with them sensitively the possibility of a move to suitable alternative accommodation in the future. If they wish to consider this, we will give them priority to transfer to suitable alternative accommodation.

- 6.7 We normally expect that someone who is seeking to succeed to a tenancy as a carer will be able to provide details of the amount and type of care provided along with independent information from either the tenants GP or social worker. We will normally also expect proof of entitlement to relevant welfare benefits.
- 6.8 Where there is more than one qualified person at any level, they will require to come to an agreement within four weeks of the tenant's death on who should succeed to the tenancy. Where this is not possible, we will decide in conjunction with the individuals.
- 6.9 Legislation allows for two rounds of succession. If these have passed and a person who would have succeeded to the tenancy but cannot because the second round of succession has passed, remains in the house, we will normally allow the individual to remain in the property on an Occupancy Agreement until they can be assisted to find alternative accommodation. Our approach will take account of the individual's circumstances and of the demand for the property which they are occupying.
- 6.10 Where an applicant does not meet the criteria for succession, we will consider carefully all of the circumstances of the individual case and consider whether it is appropriate to allocate a new tenancy to them.

## **7. MUTUAL EXCHANGE**

- 7.1 We recognise that tenants may, for a variety of reasons, need or want to move home at some point in their lives. We facilitate tenants to fulfil their housing aspirations through mutual exchanges.
- 7.2 We subscribe to the online HomeSwapper service to enable our tenants to use it free of charge to advertise their exchange. HomeSwapper is a national database of people looking to swap houses. It uses the details the tenant supplies to automatically match them to other tenants who may have a home they would be interested in. A tenant can participate in the HomeSwapper scheme if their landlord is in the social rented sector and they have permanent self-contained accommodation.
- 7.3 When a tenant has identified another tenant to exchange with, both parties are required to complete an Exchange Application Form.

7.4 We will give the tenant either consent or refusal (and in the case of refusal, the reasons for refusal), in writing, within one month of receiving the application to exchange. If we fail to respond within this time, then we are considered to have consented to the request.

7.5 We will not normally give permission for an exchange to proceed if:

- We do not have the written consent of all tenants involved in the exchange. This includes joint tenants and any person who has occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- The exchange applicant has lived at their current address for less than 12 months.
- Either applicant has rent arrears or any other housing related debt.
- There is evidence that either party to the exchange has seriously breached their tenancy agreement in the last 12 months or is the subject of current legal action by their landlord for a breach of tenancy.
- The condition of the current property (including any garden area) occupied by either party to the exchange is not of an acceptable standard as defined by us in our Lettable Standard document.
- The exchange will result in the under-occupation or overcrowding of a property taking future housing needs into account.
- Either of the parties to the exchange do not need the adaptations or additional services provided (such as specially adapted supported housing).
- We receive an unsatisfactory landlord report for a tenant of another landlord or where we have concerns about the ability of the incoming tenant to sustain a tenancy successfully.
- It is the professional judgement of our staff that an exchange to a particular property is not in the best interests of the applicant or us.

7.6 We may relax certain eligibility criteria if there are urgent health, social or financial grounds for an exchange. The decision to relax exchange eligibility criteria can only be made by a senior manager within the Housing Services Team.

- 7.7 We will visit each tenant and other exchange applicant (living in the Scottish Borders) and contact current and/or former landlords of exchange applicants from other landlords to confirm information about their tenancy before making a decision on an exchange application.
- 7.8 We and the landlord of the other party (if relevant) must agree in writing to the exchange taking place. Thereafter a date is agreed for the exchange to take place.
- 7.9 We will carry out safety checks of the gas and electrical installations before the new tenant moves in. Thereafter tenants exchanging must accept the property in its physical condition at the time of the exchange. We will not carry out any repairs that are the responsibility of the tenant.
- 7.10 We reserve the right to withdraw permission for an exchange if new or additional information that adversely affects the application comes to light after we have made our decision. We will always notify withdrawal of permission in writing to both exchange applicants.
- 7.11 If tenants have failed to obtain our written permission to exchange or gone ahead with an exchange when permission has been refused, then the exchange is unlawful. Both parties will be in the serious situation of (a) having no legal interest in the property they have moved into, and (b) being liable for the rent and any other obligation of their original tenancy. In this situation we will insist that both tenants return to their original home and take legal steps to terminate the tenancies if required.
- 7.12 We cannot take responsibility for either party withdrawing from the exchange before tenancy agreements are signed.

## **8. LODGERS**

- 8.1 Tenants who wish to take in a lodger must make this request to us in writing and we will give either consent or refusal (and in the case of refusal, the reasons for the refusal) in writing within one month of receiving the request. If we fail to respond within this time, it will be considered that we have consented to the request.
- 8.2 A lodger is defined as a person who is not a member of the family but occupies a room or rooms of the property and may pay some form of rent to the tenant who also continues to occupy the property.

8.3 We will not refuse permission unless there is good reason, however the following conditions must be met:

- the arrangement must not result in overcrowding in accordance with occupancy levels defined in the tenancy agreement;
- any rent to be charged to the lodger must be considered reasonable by us;
- we must approve the written agreement between the tenant and lodger

8.4 We will require the proposed lodger to complete a housing application form and we will normally require a satisfactory report from a former landlord of the proposed lodger.

8.5 The request to take in a lodger will not be approved if:

- there is evidence from an official source that the applicant is or has been guilty of serious antisocial behavior and/or it is likely in the opinion of our staff that housing the lodger will cause annoyance, harm or risk to other tenants, staff or others living in the locality.
- we are taking legal action against the tenant for a breach of the tenancy agreement.
- We propose to carry out work to the house which would affect the accommodation likely to be used by the lodger

8.6 Tenants of accommodation with additional services (such as supported housing) will not be given permission to take in a lodger unless the lodger requires this type of accommodation.

8.7 If permission is granted, the tenant will continue to be responsible for the payment of rent and will be responsible for the behaviour of the lodger. In terms of the tenancy agreement, the lodger is a member of the tenant's household.

8.8 There is no legal relationship between Eildon and the lodger. The lodger has no right to remain in the property if the tenant ends the tenancy or the tenancy is ended by death or through the courts, and we are not responsible for rehousing the lodger in these circumstances.

8.9 We have the right to withdraw permission at any time if there are problems relating to the lodger.

## **9. APPEALS**

- 9.1 Tenants have the right to appeal against any decision made by us concerning assignation, subletting, joint tenancies, succession, exchanges or lodger issues using our Complaints Procedure.
- 9.2 Tenants also have a right of appeal to the sheriff court if we refuse their assignation, sublet joint tenancy, exchange or lodger request.

## **10. CONFIDENTIALITY**

- 10.1 All information provided by customers in relation to this Policy will be treated as strictly confidential and will not be discussed with third parties without their permission. We will always have regard to the Data Protection Act 2018 and the General Data Protection Regulations.

## **11. TRAINING**

- 11.1 We will ensure that all staff who deal with customers receive appropriate training and information on the application of this policy.

## **12. REVIEW**

- 12.1 This policy will be reviewed every three years unless required earlier due to changes in the law, regulation, best practice or requirements of Eildon.