



SUCCESSION, TRANSFER OF TENANCY & ASSIGNATION

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1.0 POLICY

- 1.1 Linstone Housing Association Limited's policy on assignation and succession of tenancies is determined by the Housing (Scotland) Act 2001.

2.0 PURPOSE

- 2.1 This module sets out how assignations, succession and transfer of tenancies should be dealt with.

3.0 TERMINOLOGY

- 3.1 The terms for these three distinct tenancy transactions are not interchangeable. Each has different legal implications for both the tenant and Linstone Housing Association.

4.0 SUCCESSION

- 4.1 For there to be a succession to a tenancy there are two essential conditions:
1. The tenant must die. This may seem to state the obvious, but no other changes in tenancy should be referred to as a succession.
 2. There is a second necessary condition – there must be a “qualified person” to succeed. A qualified successor is described in Schedule 3 of the Housing (Scotland) Act 2001.

There are three distinct levels of priority for qualifying successors:-

- The first priority goes to the surviving spouse, co-habitee of either sex (providing the house has been their only or principal home for at least 6 months before the tenant's death) or joint tenant.
 - Second priority (if nobody qualifies or chooses to succeed from the above category) goes to a member of the tenant's family aged 16 or over providing the property was their only or principal home at the time of the tenant's death. Family members are clearly defined at Section 108 of the Act.
 - Third priority (if nobody in any of the above categories qualifies or chooses to succeed) goes to carers aged 16 or over where the property was their only or principal home at the time of the tenant's death and where they have given up their only or principal home to care for the tenant or a member of the tenant's household.
- 4.2 Paragraph 9 of Schedule 3 states that where there is more than one qualifying successor on the same level of priority they must agree between themselves which one will succeed or, they can agree to have a joint tenancy.

If there is no agreement within 4 weeks of the death of the tenant or of the date of notification of right to succeed in terms of Paragraph 10 of Schedule 3 then, as landlord, we can decide who is to be the tenant.

Where a qualifying successor(s) chooses not to succeed in favour of another qualifying successor then this must be confirmed to Linstone in writing.

Equally should a qualifying successor choose not to exercise their right to succeed and wish to vacate the property (when no-one else qualifies) then an End of Tenancy form will require to be completed. The property must be vacated within 3 months. Linstone has a responsibility to notify qualifying persons (in priority order) in writing of their right to succeed if the qualifying top level successor declines.

4.3 Where the original tenant had preserved Right to Buy (i.e. was originally a tenant of Scottish Homes prior to the stock transfer in March 1998) then that Right to Buy will pass to any priority group one successor.

However if the successor is from either priority group 2 or 3 then Right to Buy is lost.

4.4 Section 22 introduces a right to second round of succession (subsection 2) on the death of the succeeding tenant. The priority groupings described above will also apply.

Normally the death of a tenant who has succeeded under this second round of succession would lead to termination of the tenancy. However subsection (8) of Section 22 clarifies that this will not happen on the death of a joint tenant if the remaining tenant(s) continue to live in the property.

4.5 A new missive is not issued to a successor to a tenancy as this would create a new tenancy and further rights of succession. Instead, the successor should be asked to sign a docket which should then be attached to the original missive and the tenancy records should be amended. (See Annex 1).

Where a qualified person succeeds and becomes the tenant, it is as if there has been no “break” in the tenancy and that person is required, therefore, to pay rent for the full period following from the death of the tenant. If they decline the tenancy, they must pay an amount equivalent to rent only in respect of any rental period during which they have occupied the property after the tenant’s death.

4.6 Any outstanding arrears at the time of the tenant’s death is a charge against the tenant’s estate. Where there is no estate, there is no legal obligation on the successor to pay off the sum, therefore any arrear outstanding will be written off. The Allocations Team will submit a write off request to Finance.

4.7 If no-one qualifies for the tenancy under the rules in 4.1 above, the Operations Director has discretion to transfer the tenancy to:

- someone who had a close relationship with the tenant (whether related to them or not) and

- lived with the tenant in the house as his or her only or principal home at the time of the death and
- has no other accommodation available to him/her which it would be reasonable to expect him or her to occupy.

This would cover occupants of the property who are unrelated to the tenant e.g. friend. This will be a transfer of tenancy and not a succession – see Section 7.

- 4.8 Paragraph 5 of Schedule 3 states that for a first succession, where the houses has been designed or substantially adapted for a person with special needs, if it is someone from level two or three who qualifies for succession, Linstone has the right to terminate the tenancy and offer that person suitable alternative accommodation unless they have special needs requiring accommodation of the kind provided by the house.
- 4.9 For a subsequent succession, where the house has been designed or substantially adapted for a person with special needs, then regardless of the priority level of the person who qualifies for the tenancy, Linstone has the right to terminate the tenancy and offer that person suitable alternative accommodation unless they have special needs requiring accommodation of the kind provided by the house.
- 4.10 If Linstone obtains an order for repossession which forces a tenant to move to alternative accommodation then the SST will be deemed to have continue without break for the purposes of succession.
- 4.11 Where someone would have succeeded to the tenancy but a second round of succession has already passed then, in accordance with Subsection (9) of Section 22, that person will be allowed to remain in the property for a period of up to 6 months. This will not however be under either a Scottish Secure or Short Scottish Secure Tenancy. This is to provide time for the person to find alternative suitable accommodation. During that time Linstone will also consider whether it will be possible to allocate a new tenancy to the applicant concerned in the normal way.

5.0 TRANSFER OF TENANCY

- 5.1 There is legally only one type of transaction which should be called a transfer of tenancy; transfer from one spouse to another by the court under the terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Linstone's consent to this is not required but we are able to object to the transfer by the representation in court.
- 5.2 A new missive should not be issued, but a docket (see Annex 2) should be completed. The tenant reference number need only be changed if there is an arrear attributable to the original tenant.
- 5.3 Where the original tenant had preserved Right to Buy (i.e. was originally a tenant of Scottish Homes prior to the stock transfer in March 1998) then that right will also transfer to the new tenant.**

6.0 ASSIGNATION OF TENANCY

- 6.1 An assignation of tenancy occurs when a tenant who intends to leave the house conveys all his rights and obligations under the Missive of Let to another person. The other person becomes substituted as the new tenant and becomes responsible for all aspects of the tenancy including any outstanding rent arrears. Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 entitles the tenant to assign their home with the consent of their landlord.
- 6.2 The new tenant acquires the rights and obligations of the previous tenant by a written assignation document referring to and invoking the original Tenancy Agreement (i.e. the docket at Annex 3). **The only exception to this being the Right to Buy which cannot be assigned.**
- 6.3 In order to ensure that tenants are fully aware of this situation, the Housing Services Manager must write a letter of explanation to the incoming tenant and ask them to sign and return a docket stating that they have read and understood the information given to them before permission for the assignation is granted. (See Annex 3).
- 6.4 The Housing (Scotland) Act 2001 states that whilst the landlord's consent is required for an assignation to take place, this should not be *unreasonably* withheld.

Subsection (3) of Section 32 gives examples of grounds for refusal:-

- (a) A Notice of Proceedings for Possession has been served on the tenant specifying one of the "conduct" grounds set out in paragraphs 1 – 7 of Schedule 2 e.g. rent arrears, anti social behaviour, abandonment of the tenancy etc.
- (b) An order for recovery of possession has been made against the tenant.
- (c) It appears that the tenant has or is to receive any unreasonable payment in relation to the assignation.
- (d) The assignation would lead to overcrowding.
- (e) Linstone, as landlord, intends to carry out work to the house or building which will affect the accommodation concerned.

These grounds are not exhaustive and can also be amended by order of the Scottish Ministers.

- 6.5 The Office will respond to a request for an assignation within one month of receipt of that request. The landlord is deemed to have consented to the assignation if he fails to respond within that time to a tenant's request. If the request is not being approved then the letter sent must clearly explain the reasons for refusal.
- 6.6 The house must have been the only or principal home of the assignee for a minimum of six months prior to the application for consent to assign.

- 6.7 Applications to assign a tenancy must be approved by the Operations Director.
- 6.8 Where consent to assign is refused and the tenant is aggrieved by the decision then they have a right to appeal to the court. Where the court decides the landlord has acted unreasonably they will overturn this decision thereby authorising the assignation.

7.0 JOINT TO SINGLE

- 7.1 Section 13 of the Housing (Scotland) Act 2001 provides for the termination of a joint tenant's interest in a tenancy. In order to terminate their interest the joint tenant must give 4 weeks written notice to Linstone and to each of the remaining joint tenants. A docket (see Annex 4) should be completed by the departing tenant to give the appropriate notice. The remaining tenant(s) should also sign the docket to acknowledge that notice has been given.
- 7.2 Once the notice period has expired letters will be sent to both parties (see Annex 5A and 5B) confirming that the tenancy will continue in the name(s) of the remaining tenant(s).
- 7.3 Where the departing tenant does not formally end their tenancy then there is a procedure to deal with this through abandonment. This is detailed in HM12 – Abandoned House Policy.

8.0 VOLUNTARY CHANGES IN TENANCY

- 8.1 This category includes several transactions in tenancies which staff colloquially refer to as “transfers of tenancy”. The common feature of tenancy transactions in this category is that the original tenant does not intend to leave the house.
- 8.2 In the case of a voluntary “transfer” from tenant to spouse, or co-habitee, or joint tenant, where the original tenant is not leaving the house. Applications must be submitted in writing to Linstone **on the form at Annex 3(A)** and the prospective tenant must reside at the property as their only or principal home.

Linstone will not withhold consent without reasonable grounds. Reasons for refusal include:-

- The proposed tenant has been evicted for anti social behaviour or has substantial arrears.
- The request is an obvious attempt to gain entitlement to Housing Benefit which would not otherwise be payable.
- A notice of proceedings for possession has been served on one of the conduct grounds and any pending legal action would be compromised by the change of tenancy.
- An order for recovery of possession has been made against the original tenant.

These grounds are not exhaustive and each application will be assessed on its merits. Details will be reported at HM Sub Committee. **If the transfer is approved the letter at**

Annex 3(A) should be sent.

8.3 Where the tenant wishes to transfer the tenancy to an adult child who would be entitled to succeed to the tenancy in the event of the tenant's death, the rights of succession granted by legislation should be explained to the tenant to illustrate that this is not necessary in terms of the child's security of tenure. If, however, the tenant expresses a strong preference for the transfer, then the case shall be referred to the Operations Director, for approval. Each case shall be looked at on its merits and again details will be reported to HM Sub Committee. Possible reasons for refusal are similar to those described at 8.2 or 8.4.

8.4 The other main transfer is from a sole to a joint tenancy. This covers, for example, the situation where an existing tenant marries and both spouses wish a joint tenancy.

A tenant is entitled to a joint tenancy with one or more individuals. Such tenants will be jointly and severally liable for their responsibilities under the tenancy including rent.

Applications must be submitted to Linstone in writing. All joint tenants must live or intend to live in the property as their only or principal home. Applicants must be asked to complete the docket at Annex 3 (B).

Linstone cannot withhold consent without reasonable grounds. Reasons for refusal include:-

- Overcrowding would result from the granting a joint tenancy.
- One or more of the proposed joint tenants has been evicted for anti social behaviour or has substantial arrears.
- The request is an obvious attempt to gain entitlement to Housing Benefit which would not otherwise be payable.
- A notice of proceedings for possession has been served on one of the conduct grounds and any legal action pending would be compromised by the award of a joint tenancy.
- An order for recovery of possession has been made against the tenant.

These grounds are not exhaustive and each application must be assessed on its merits.

Linstone will monitor the frequency of and reasons for refusal of such applications. Details of both successful and unsuccessful applications will be formally reported at Housing Management Sub Committee meetings.

8.5 Where a joint tenancy is being requested between a spouse and another household member the implications of this for the non tenant spouse under the Matrimonial Homes Act must be explained i.e. the non tenant spouse ceases to be a non-entitled spouse and therefore has no claim to occupancy rights unless the tenant who is not the spouse waives his/her right of occupation.

8.6 Where the original tenant had preserved Right to Buy (i.e. was originally a tenant of Scottish Homes prior to the stock transfer in March 1998) then

- **In the case of joint to single tenancies that right will continue.**
- **In the case of single to joint tenancies that right will continue.**
- **In the case of voluntary “transfer” to a spouse, partner or other household member then the Right to Buy will be lost.**

9.0 THE MATRIMONIAL HOMES (Family Protection) (Scotland) ACT 1981

9.1 The terms of this Act have implications for transfers and assignations of tenancies as it gives certain rights to spouses who are not joint tenants. For detailed information on the implications of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 please see Policy No. HM09 “Termination of Tenancy – Matrimonial Homes Act”.

10.0 RIGHT OF TENANT TO APPEAL

10.1 Linstone has several responsibilities in the above matters including compliance with legislation, sensitive management of the housing stock, response to tenants needs and fairness to waiting-list applicants. In some circumstances there will be a conflict of interests. It should be noted that an aggrieved tenant has recourse:

- i) to the Management Committee
and then
- ii) to the **Public Services** Ombudsman.

Where the right to apply for a change to the tenancy has been conferred through the Housing (Scotland) Act 2001 e.g. assignation, joint tenancy, etc then there is also a right to appeal to the court.

11.0 SAFETY CHECKS

11.1 Any of the above tenancy transaction should result in the following safety checks being ordered:

- i) full electrical inspection
- ii) gas heating and installations (if appropriate)

Access should be arranged with the incoming tenants and should take place as soon as is feasible following the transfer date.



SUCCESSION TO SCOTTISH SECURE TENANCY

ANNEX 1

I, _____

hereby acknowledge that I have succeeded to the Scottish Secure Tenancy at

following the death of _____ (name) _____ (relationship)

on _____

under Section 22 of the Housing (Scotland) Act 2001. This is a Priority _____ succession.
The situation in relation to Right to Buy has been clearly explained.

Signature of Successor _____

Date _____



COURT TRANSFER OF TENANCY

ANNEX 2

I/We the “Transferor”
hereby assign/transfer to the “Transferee”
my/our whole rights, obligations and interest as tenants(s) in the dwelling house at
.....
with effect from to be bound by the terms of the tenancy
embodied in the attached Tenancy Agreement.

(Transferor) Date (Signature)

(Where second Transferor)

Date (Signature)

(Transferee)

Date (Signature)

(Where second Transferee)

Date (Signature)

On behalf of Linstone Housing Association, proprietor and landlord, I hereby accept to the above
Transfer and accept the Transferee as tenant(s).

Date (Signature)



Contact: Housing Officer

Our ref: ASS/Int

Dear

Request to Assign **the** Tenancy of _____

From _____ (Assignee)

I refer to the above request received _____.

*An assignation of tenancy occurs when a tenant, (the assignor) intends to leave the house and wishes to transfer all their rights and obligations under the Tenancy Agreement to another person, (the assignee). The assignee becomes substituted as the new tenant and becomes responsible for all aspects of the tenancy including any outstanding rent arrears. **A transfer is when the original tenant wishes to still remain in the house as part of the new tenants household.***

It must be noted however that if the original tenant has the Right to Buy the property then this right will not transfer to the assignee.

Before permission can be granted for this assignation Linstone Housing Association require you to sign the attached form and return it to the office. This confirms that you have read and understood the information given to you concerning the assignation and in particular any rent arrears.

If you have any queries regarding this letter or your application in general please contact your Housing Officer on 01505-382383.

Yours sincerely

Housing Services Manager



ASSIGNATION/VOLUNTARY TRANSFER

I/We the “Assignor(s)/Transferor ”

Hereby assign to the “Assignee(s)/Transferee”

My/our whole rights, obligations and interest as tenant(s) in the dwelling house at

.....
with effect from to be bound by the terms of the tenancy
embodied in the attached Tenancy Agreement.

(Assignor)/ Date..... (Signature).....

(Transferor)

(Where second Assignor)(Where second Transferor)

Date..... (Signature).....

- I hereby agree to accept responsibility for any outstanding arrear previously accrued.
- I accept that I will not have the Right to Buy the property.

(Assignee) Date..... (Signature).....

(Transferee)

(Where second Assignee)(Where second Transferee)

Date..... (Signature).....

On behalf of Linstone Housing Association, proprietor and landlord, I hereby consent to the above Assignment/Transfer and accept the Assignee(s)/Transferee as tenant(s).

Date..... (Signature).....



Contact: Housing Officer

Our ref: Ass/App

Dear

*I am writing to advise you that Linstone Housing Association has now approved your recent application for Assignment/**Transfer** of the above tenancy.*

From _____ you are, therefore, the sole tenant(s) and have full responsibility for the terms of the tenancy.

I have asked _____ to pass the original Tenancy Agreement to you. A blank Tenancy Agreement is enclosed for your information.

I should be obliged if you would complete and return the enclosed form, giving details of your household.

Please contact your Housing Officer on 01505-382383, if you wish further assistance.

Yours sincerely

Housing Services Manager

ANNEX 3(B)



CHANGE OF TENANCY FROM SINGLE TO JOINT

Tenant Name: _____

Address: _____

I, _____ request a joint tenancy of the above property with _____.

Signature _____ Date _____

I, _____ wish to become joint tenant of the above property with _____.

I have received a copy of Linstone Housing Association's Tenancy Agreement and agree that these conditions shall be binding on me and my signature below shall be conclusive evidence that I agree to bound thereby. I also accept that I am jointly and severally liable for any outstanding arrear relating to the tenancy.

Signature _____ Date _____

FOR OFFICE USE ONLY
APPROVED Y/N

Signature _____

Date _____

ANNEX 3(B) CONT'D



Dear

REQUEST FOR A JOINT TENANCY: (ADDRESS)

I refer to your recent application to become joint tenants of the above property.

Having now fully considered this request I am pleased to advise that from _____ the tenancy has been transferred into joint names.

From that date you are both/all jointly and severally liable for the terms and conditions of the previously supplied Tenancy Agreement.

Please contact your Housing Officer on 01505 382383 if you have any queries in relation to this matter.

Yours sincerely

Housing Services Manager

ANNEX 4



CHANGE OF TENANCY FROM JOINT TO SINGLE

First Tenant Name

Second Tenant Name

Address

.....

.....

DECLARATION

I, hereby give 4 weeks notice of my intention to
end my part of the joint tenancy of

..... as from

Signature Date

DECLARATION

I, hereby acknowledge receipt of the foregoing
notice and agree to take over sole tenancy of the property at

..... as from

I have received a copy of Linstone Housing Association's Tenancy Agreement, and agree that these conditions shall be binding on me and my signature shall be conclusive evidence that I agree to bound thereby. I accept that from the date noted above I am solely responsible for any outstanding arrear jointly accrued.

Signature Date

On behalf of Linstone Housing Association, proprietor and landlord, I hereby acknowledge the above change in tenancy.

Signature Date

ANNEX 5A



Contact: Housing Officer

Our ref: JTS/FT

23 March 2006

Dear

_____ (Address) _____

I refer to the tenancy of the above Linstone Housing Association property which you held jointly with.....

At your request, Linstone Housing Association has now terminated your share of the tenancy.

I confirm, therefore, that from your interest in the tenancy has been ended.

Please contact your Housing Officer on 01505-382383 should you have any queries relating to this matter.

Yours sincerely

Housing Services Manager

ANNEX 5B



Contact: Housing Officer

Our ref: JTS/CT

23 March 2006

Dear

I refer to the tenancy of the above Linstone Housing Association property, which you held jointly with

At request, Linstone Housing Association has now terminated his/her share of the tenancy.

I confirm, therefore, that from you are now sole tenant and have full responsibility in adhering to the conditions of let contained in the previously supplied Tenancy Agreement.

Please contact your Housing Officer if you have any queries relating to this matter.

Yours sincerely

Housing Services Manager