



POLICY

ASSIGNATION, SUB-LETTING, LODGERS, JOINT TENANCY & MUTUAL EXCHANGE

Wellhouse - The Place To Be

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VISION AND VALUES

WELLHOUSE – THE PLACE TO BE.

This simple statement is our vision of Wellhouse as an attractive place where people feel happy and safe, benefit from having a good home and an attractive environment and feel proud to be part of a vibrant community.

We believe that our values of **Trust, Honesty, Integrity, Excellence, Accountability and Sustainability** supported by a comprehensive policy framework will help make our vision a reality.

GOVERNANCE

Wellhouse HA is a community controlled registered social landlord and is managed by a group of local people who are elected onto the Management Committee. Their role is to make sure that the Association is well run, meets the needs of the local area and is responsive to what is important to local people. We may co-opt other people onto the Management Committee from time to time where we feel we need specialist support.

The Management Committee appoints senior staff, agrees all the Association's policies and takes all the key decisions. The Director and the senior team support the Committee in these responsibilities.

EQUAL OPPORTUNITIES STATEMENT

We aim to ensure that all services, including the delivery of this policy, provide equality of opportunity.

We will respond to the different needs and service requirements of individuals. We will not discriminate against any individual for any reason, including age, disability, gender re-assignment, marriage, civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, or other status.

POLICY AIMS

The aim of this policy is to set out how we will manage applications for assignation of a tenancy, applications for sub-letting or taking a lodger into your Wellhouse Housing Association tenancy, as set out in the by the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and the Association's Scottish Secure Tenancy Agreement.

INTRODUCTION

All Scottish Secure Tenants have a legal right under the Housing (Scotland) Act 2001 and the amended provisions of the Housing (Scotland) Act 2014 to request permission to assign their tenancy to another person, for a person to be added as a joint tenant, to sub-let their property or to take in a lodger.

The Act requires that they must make any request in writing to the landlord first to ask for consent. The landlord may not unreasonably refuse such a request and must respond to any requests within one month of receiving the application. If the Association fails to respond within one month of receipt of the application, it is taken to have consented to the application.

The Act lists some reasons which could be considered legitimate reasons for refusing such requests. The list is not exhaustive and landlords may use other reasons, provided they consider these to be reasonable.

In the event of a challenge of a refusal, only the courts would be able to decide on whether the refusal had been reasonable. The refusal grounds listed in the Act cover situations where:

- a Notice of Proceedings for Possession has been served on the tenant specifying any of the "conduct" grounds set out in paragraphs 1 to 7 of Schedule 2 to the Act;
- the Association has already obtained an order for recovery of possession against the tenant;
- it appears to the Association that the tenant is to receive a payment for the assignment, subletting or other transaction which is other than a reasonable rent or a reasonable and returnable deposit;
- the request would lead to overcrowding;
- the Association proposes to carry out work to the house or building which would affect the accommodation likely to be used by the subtenant or other person who would reside in the house as a result of the transaction.

ASSIGNATION

If a tenant moves out of their home or is no longer able to live in their home permanently due to their health, we will consider assigning the tenancy to a member of the household under the provisions of the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2014. Any tenant who has a Scottish Secure Tenancy Agreement can apply to assign their tenancy to another person(s), provided the Association provides written consent for the assignment to proceed.

We will normally do this if the person(s) is the tenant's son or daughter, or the person(s) has lived in the house as a member of the household, or the person(s) has been a full time carer to the tenant.

The applicant (the assignee) must;

- be 16 or over and have had our permission to reside in the property and;
- Lived in the house as their only or principal home for at least 12 months prior to the date of the application seeking our consent to the assignment.
- The tenant must also have notified the Association in writing that the individual is living in the property as their only or principal home before the 12 month period begins.

The Association will consider any application to assign a tenancy, and outline grounds for refusal. These will include, but will not be limited to, statutory grounds mentioned previously and;

- The Association will normally refuse an assignment request where a Notice of Proceedings for Recovery of Possession (NOP) has been served for rent arrears, or there has been other breaches of the Scottish Secure Tenancy Agreement, such as Anti-Social Behaviour, where action has been taken against the tenancy.
- The Association will consider the size of the accommodation and proposed household composition. The Association can refuse an assignment request if approval would lead to overcrowding or under occupancy.

- A request to assign a tenancy is being made to circumvent the normal allocations process.
- Where the applicant would not fall into any of the reasonable preference categories under s20 of the Housing (Scotland) Act 1987, updated and amended by the Housing (Scotland) Act 2001, and Housing (Scotland) Act 2014.

SUB-LETTING

Tenant's may sub-let their property providing that our prior written permission has been granted (we will not unreasonably withhold our consent).

The tenant must have lived in the property for 12 months before permission to sub-let is requested. A property can be sub-let for a period of up to one year where the tenant is going to be absent on a temporary basis (e.g. working, training, studying away, extended holiday, etc). The application must state the duration, the charges and the tenancy/household details of the proposed sub-let tenancy.

As with requests to assign a tenancy, the Association will consider all applications and outline reasons for refusal. These will include, but will not be limited to, statutory grounds mentioned previously and;

- The Association will normally refuse an assignation request where a Notice of Proceedings for Recovery of Possession (NOP) has been served for rent arrears, or there has been other breaches of the Scottish Secure Tenancy Agreement, such as Anti-Social Behaviour, where action has been taken against the tenancy.
- The Association will consider the size of the accommodation and proposed household composition. The Association can refuse an assignation request if approval would lead to overcrowding or under occupancy.

However, at all times a sub-let property will remain in the name of the tenant and the person sub-letting the property cannot succeed to the tenancy.

The tenant will continue to be legally responsible for ensuring adherence to the conditions of tenancy, including payment of rent, not causing nuisance, etc. If there are any breaches of tenancy we will take legal advice and may take steps to take action against our tenant.

JOINT TENANCY

Within Section 11 of the Housing (Scotland) Act 2001, a tenant can apply for another person to be a joint tenant of the property.

As with requests to assign a tenancy, the Association will consider all applications and outline reasons for refusal. These will include, but will not be limited to, statutory grounds mentioned previously.

An application for joint tenancy will also be refused if;

- The person becoming a joint tenant has not lived in the property for 12 months
- The Association has not been notified in writing that the applicant is living in the property
- This includes spouses, civil partners and co-habitees.

LODGERS

Tenants may take in lodgers provided that our prior written permission has been granted.

We will not unreasonably withhold our consent, however, we will not permit lodgers to move in if:-

- Overcrowding results;
- The proposed lodger has been given an Anti-Social Behaviour Order (ASBO);
- They have been evicted for anti-social behaviour in the past 3 years;
- They have reached the 'final warning' stage in the ASB process;
- They have had a NOP served due to a breach of tenancy conditions or there is clear evidence of anti-social behaviour regardless of legal action
- They owe the Association, the equivalent of more than one month's rent and/or rechargeable repairs and have not entered into and maintained an arrangement to repay the debt

Lodgers have no rights of succession nor can the tenant assign the tenancy to a lodger.

MUTUAL EXCHANGES

The Association will encourage mutual exchanges between tenants where both households would benefit from the exchange and be housed in appropriately sized accommodation.

Any of our tenants may request a mutual exchange with another Wellhouse Housing Association tenant or with a tenant of another social landlord. We will encourage tenants to use the Homeswapper scheme.

Tenants must request the mutual exchange in writing and a form is available for this, which tenants will be assisted to complete, where necessary.

To qualify for a mutual exchange tenants must:-

- Obtain our written consent and the written consent of any other landlord involved in the exchange
- Have a clear rent account
- Have a Scottish Secure Tenancy (SST)
- Not be the subject of an ASBO or Notice of Proceedings

When considering which property the tenant would like to mutually exchange to, the tenant must make sure that they exchange will not lead to overcrowding.

Similarly, they must make sure that they will not under occupy the house by more than one bedroom. If the move will cause overcrowding or under occupation as above, we will not normally approve it.

Any tenant who wishes to exchange with a tenant from another social landlord must advise the other tenant that they must also fill out an application form and must comply with all of the above criteria.

We will make our decision on the application within 28 days of the date from which we receive

the application. If we do not receive all of the information required to allow us to make a decision within 28 days we will refuse the application. However, both applicants can re-apply.

If we decide that a mutual exchange application should be refused we will advise both applicants in writing and will encourage both applicants to complete application forms for rehousing.

If we approve the application, both applicants will require to sign new tenancy agreements for their new homes and prior to this must have given access to allow statutory checks for gas and electricity services to be carried out. The tenant applying for the mutual exchange will be re-charged costs for gas and electric service checks.

Tenants accept the property in the condition at the time of the exchange.

COMPLAINTS

We have a separate complaints policy and procedure. Leaflets and copies of the complaints procedure are available from the Association's office and on our website. We also provide information on how our customers can make a complaint to the Scottish Public Services Ombudsman (Bridgeside House, 99 McDonald Road, Edinburgh EH7 4NS, telephone 0800 377 7300) and how to contact the Scottish Housing Regulator.

The Ombudsman will not normally deal with complaints unless customers have followed the Association's complaints' procedure

POLICY REVIEW

The policy will be reviewed every three years, or sooner, in response to a change in legislation or circumstance.