



# Ferguslie Park Housing Association

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

Date Approved by the  
Management Board

April 2022

Signed:

Chairperson

Date of Next Review

APRIL 2025

## **VISION AND VALUES**

### **Ferguslie Park Housing Association**

#### **Serving the Community – Valued by the Community**

Ferguslie Park Housing Association's vision is for a vibrant community which leads its own future and values the work we do in support of this. We wanted to encapsulate all of this into a short simple vision statement which serves to remind us of our role and our ultimate goal, namely:

*"Serving the Community - Valued by the Community"*

## **GOVERNANCE**

Competent governance is crucial to running the Association. We have a Governing Management Board consisting of up to 12 members made up of local tenants, individuals who work or have an interest in the area. Our rules allow us to have a minimum of 7 members and a maximum of 12 members.

Our Board Members are all volunteers who give their time, experience and skills to ensure the Association meets its strategic objectives which are set out in our business plan.

The Board are responsible for the direction and control of the organisation.

## **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 assignment of a tenancy, applications for sub-letting or taking a lodger into your Ferguslie Park Housing Association tenancy, applications to exchange your tenancy with another tenant of a social landlord (known as Mutual Exchange) and applications for joint 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, section 33 and Schedule 5, Part 2, 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, request to exchange their tenancy with another tenant of a social landlord 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, in writing, within **one calendar 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.

If we refuse an application to assign/sub-let/change to joint tenancy/apply for a lodger/mutual exchange of the tenancy, we must give the tenant reasons in writing explaining why the application has been refused.

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 assignation.
- The tenant must also have notified the Association in writing or through the online 'My Home' tenant portal 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 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.
- 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 legal provisions relating to subletting of tenancy requests are contained in the Housing (Scotland) Act 2001, section 32 and Schedule 5, Part 2, as amended by the Housing (Scotland) Act 2014, section 12.

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 assignment 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**

We promote the right of tenants to apply to have joint tenancies with another person(s).

The legal provisions relating to joint tenancy requests are contained in the Housing (Scotland) Act 2001, section 11 and section 13. This has been amended by the Housing (Scotland) Act 2014, section 12.

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.

The tenant must apply with the proposed joint tenant(s), in writing, to us and we can only refuse consent if it is reasonable to do so.

The proposed joint tenant must have lived in the house as their only or principal home during the twelve month period immediately before the tenant applies for a joint tenancy.

The twelve month period does not begin unless the landlord has been notified that the person is living in the property as their only or principal home. The landlord must have been notified of this by the tenant and/or other joint tenant, or the proposed joint tenant.

### **Ending of a joint tenancy**

A joint tenant may also end their legal interest in the tenancy by giving four weeks written notice to us and to all other joint tenants.

### **Meaning of principal home**

Principal home is not defined in the Housing (Scotland) Act 2001. However, a house will be deemed to be a person's principal home if she/he has a substantial connection to it, the house may be deemed to be their principal home if:

- the person intends to return to the house; and

- can demonstrate this, for example, their room is being kept available with personal belongings kept there.

Tenants may not permit statutory overcrowding by allowing other people to live with them.

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 or through the online 'My Home' tenant portal that the applicant is living in the property
- This includes spouses, civil partners and co-habitees.

### **Refusing applications for joint tenancies**

Unlike other rights, the Housing (Scotland) Act 2001 does not specify what constitute reasonable grounds for refusing requests to create a joint tenancy.

In line with good practice guidance, though, we seek to minimise refusals.

### **Appeals**

The Housing (Scotland) Act 2001 empowers us to refuse applications if we deem this to be reasonable.

The Act does not provide for an appeal to the sheriff court in the case of refusals. If a tenant wishes to appeal against a joint tenancy refusal, they will write to the Head of Operations detailing their request (and reasons) for appeal.

### **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.

We must respond, **in writing**, to applications within **one calendar month** of receiving lodger applications.

If we fail to respond to applications within this period, consent is deemed to have been granted automatically.

If we refuse an application to take in a lodger, we must provide the tenant with a written response detailing clearly why the application has been refused. This is important so that tenant can raise an appeal if they disagree with our decision.

Tenants can appeal to the sheriff court if they are dissatisfied with our decision to refuse permission to take in a lodger. We promote the rights of tenants to seek independent redress and provide them with information, in writing, about their appeal rights.

## **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 Ferguslie Park Housing Association tenant or with a tenant of another social landlord.

Tenants must request the mutual exchange in writing or through the online 'My Home' tenant portal 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 (4 Melville Street, Edinburgh EH3 7NS, 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 after three years, or sooner, in response to a change in legislation or circumstance.