



## MANAGING TENANCIES POLICY

<b>Policy Number</b>	HM 3.9 Version 1.0
<b>Prepared by</b>	Dan Thompson, Director of Housing Services
<b>Date of Review</b>	July 2024
<b>Date of Next Review</b>	July 2027
<b>Reviewed &amp; Approved by</b>	Housing Committee

## **OSPREY HOUSING MANAGING TENANCIES POLICY STATEMENT**

***Osprey Housing believe that effective and efficient tenancy management is vital to the success of maintaining good quality services for all our tenants and provide value for money.***

- **Ambition and Achievement** – we are a high performing organisation delivering through innovation and challenge.
- **Equality and Respect** – we recognise and celebrate the unique value in everyone.
- **Quality and Professionalism** – we strive to deliver high standards.
- **Agile and Responsive** – we are flexible and quick to deal with change without diminishing our delivery.

## 1. Introduction

This policy encompasses the following:

- a) Mutual Exchange
- b) Assignment
- c) Sub-letting
- d) Succession
- e) Creating or ending a Joint Tenancy
- f) Lodgers

This Policy encompasses a range of formal options available to tenants to enable them to continue their tenancy in the best interests of themselves or a family member. Tenants can apply to mutually exchange, assign, sub-let, become joint/sole tenants or occupants to succeed to a tenancy. Osprey Housing recognises these are important issues for tenants and we have incorporated these into one policy document for ease of reference.

This policy was compiled with reference to the following relevant legislative and policy documents:

- Scottish Secure Tenancy
- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014
- Allocations policy
- Anti social behaviour policy
- Equality and Diversity policy

## 2. Policy Aims

The aims of this policy are:

- To provide accessible information for tenants and residents with regards to their statutory rights on succession, assignment, mutual exchange and joint tenancies.
- to ensure that all tenants and residents are treated fairly and that due regard is given to current legislation, regulation and best practice when dealing with requests for a tenancy change.

## 3. Policy Principles

### 3.1 Mutual Exchange

A mutual exchange is when two or more tenants wish to swap their properties. Tenants may exchange with:

- another Osprey Housing tenant

- a tenant of another registered social landlord or
- a tenant of a Local Authority
- any tenant currently with a SST

The exchange must meet the requirements of our Allocations Policy in relation to;

- Rent arrears – rent accounts must have been clear or a repayment agreement maintained for a minimum of 3 months.
- Property condition – a pre inspection of properties will be carried out. The property has to be brought up to standard before we will approve a mutual exchange. The inspecting Asset Officer will advise the tenant accordingly of any repairs deemed to be tenant responsibility that have been identified during the inspection.
- Property size criteria. The move should not result in overcrowding. When one party is downsizing then a one room flexibility may be considered in relation to under-occupancy if the mutual exchange will result in better use of available housing stock
- Property is suitable for the incoming tenant in terms of medical conditions

Discretion can be applied by approval of the Director of Housing Services when circumstances above are not complied with. However, the move will significantly improve the quality of life for the applicants.

Mutual exchanges must be completed within 28 days from receipt of the application. They must be formally approved or refused in writing by both participating landlords within this timescale. From the date of approval, the participating tenants must carry out the exchange within one calander month on a mutually agreed date.

Both participating tenants will end their current tenancy and sign new SST documents for the property they have exchanged with. The SST must be signed before the exchange takes place.

### **3.2 Assigntion**

Assigntion involves the transfer of tenancy to another person(s). The proposed assignee must occupy the house as their only principal home for a period of at least twelve months immediately preceding the tenant's formal application to assign. Applications to assign should be refused until this criteria is met. The Housing Officer should obtain at least one document confirming occupancy as the principal home. Any of the following documents are satisfactory:

- Written details on the tenancy file
- Letter from other agency or body
- Household bill or bank statement

Landlord must have been notified they are living in the house – date of occupancy is taken from the date landlord has been formally notified. This cannot be backdated with evidence if we have not been notified at the time of a change in household.

When an application is approved the assignee(s) should be given a copy/copies of the existing tenancy agreement; as it is not a new tenancy, the assignee does not require to sign a new agreement. The Housing Officer should explain the terms of SST to the assignee and ask them to sign an Addendum which will be attached to the existing tenancy agreement.

### **3.3 Sub letting**

Tenants can apply to sub let their property for a temporary period of up to one year. Applications can only be made if tenant has been in property for a minimum of 12 months (unless the application is following an assignation or succession) This will be approved on the following basis;

- The period will be reviewed at agreed intervals up to the period of one year
- The property is pre-inspected and no issues or recharges identified
- The sub let will not result in over-crowding
- The tenant does not benefit financially from the arrangement and that the rent they charge is no higher than the rent charged by Osprey.

Tenants must obtain written permission before sub-letting all or part of their home. Applications will not be unreasonably refused however will be assessed on the individual circumstances and a written response within 28 days of application.

### **3.4 Succession**

Tenancy succession is where the tenancy is passed on to a qualifying person on the death of the tenant.

- A tenant's surviving spouse/civil partner (or cohabiters) has first priority. The house must have been their sole or principal home for 12 months (with exception of spouse) prior to the tenant's death. Or a joint tenant, if the house was their only principal home on the tenant's death.
- A member of the tenant's family has second priority, if there is no surviving spouse, cohabiter or joint tenant. The house must have been their only or principal home and they are 16 years old.
- A carer (over 16 years of age) has third priority. They must be occupying the property as their principal home and have given up their previous home to do so.

The tenancy can only be inherited twice. If the tenancy has already been inherited twice, a third death will normally end the tenancy. However, if there is a surviving joint tenant their Scottish secure tenancy agreement will continue.

If the property has been designed or adapted for someone with a disability then only a qualifying person with a disability can succeed to the tenancy. If a qualifying person cannot succeed to an adapted property because they have no disability we will seek to provide other suitable accommodation.

If we agree to transfer the tenancy, a new tenancy agreement will be signed by the assignee and a new tenancy started in their name.

The landlord must have been notified they are living in the house – date of occupancy is taken from the date landlord has been formally notified. This cannot be backdated with evidence if we have not been notified at the time of a change in household.

### **Succession refused**

In some instances the landlord can refuse a succession application and take back possession of a property. In these circumstances, the Osprey Housing will allow an occupant a reasonable length of time to find alternative accommodation and advise them accordingly of their housing options.

## **3.5 Creating or Ending a Joint Tenancy**

Osprey Housing will permit a joint tenancy to be created at the commencement of a tenancy between any two persons who were joint housing applicants. In other circumstances we can make amendments to the existing tenancy to change a sole tenancy to a joint tenancy or make a joint tenancy a sole tenancy.

### **3.5.1 Creating a joint tenancy**

Where an application is made for the creation of a joint tenancy after the commencement of a tenancy Osprey Housing may permit a joint tenancy if the existing tenant applies in writing and supplies relevant additional information at the time of applying for permission. The current tenant must inform Osprey Housing of the full details of the proposed joint tenant and complete the relevant application form disclosing all information.

In accordance with 5.2 Section 12(1) of the Housing (Scotland) Act 2014 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. Osprey Housing must have been formally notified that the person has moved in and that the property is the person's only or principal home. The 12 month qualifying period (as set out above) does not commence until Osprey Housing has been notified and has given its consent for the person to reside. Any period before we have been notified or after we have been notified but before we have given consent will not count as part of the 12 month qualifying period.

The 12 month period applies to everyone including the tenant's spouse, civil partner or cohabiting partner.

When an application is approved the joint tenant should be given a copy/copies of the existing tenancy agreement; as it is not a new tenancy, the joint tenant does not require to sign a new agreement. The Housing Officer should explain the terms of SST to the assignee and ask them to sign an Addendum which will be attached to the existing tenancy agreement.

### **3.5.2 Ending a joint tenancy**

Amending a tenancy from Joint to Sole is in effect ending the interest of one party in the tenancy. Subsequently the tenancy rights for the remaining joint tenant continue. The tenancy can only be amended from joint tenant in the following circumstances:

- The joint tenant can end his/her interest by giving 4 weeks written notice to the landlord and other joint tenant. A joint tenant under a Scottish Secure Tenancy may bring to an end their interest in the tenancy by giving the 4 weeks' notice that they will be no longer residing in the property. The remaining tenant will then have the full responsibility of the tenancy obligations after the 4 week period.
- Where a couple are joint tenant and one of the partners wish to amend the joint tenant to be a Sole tenancy this may be done as long as the other joint tenant (partner) agrees and confirms that they are ending their interest in the joint tenancy in writing as above by signing the relevant assignation Appendix. This will then be attached to the original tenancy agreement.
- Where a joint tenant is in hospital/care and the final decision has been made that they will not be returning to the tenancy, written notification from the tenant is required. If the tenant is unable to do so, their representative can give approval if they have power of attorney or guardianship rights. Where appropriate, this can also be provided by Social Work Services or Hospital Consultant. In this instance both tenants (or the remaining tenant and the representative of the outgoing tenant) must sign the assignation form, which should be attached to the original tenancy agreement.
- On the death of one of the joint tenants (see succession). A copy of the death certificate should be attached to the original tenancy agreement
- After the abandonment of the tenancy by one of the joint tenant s where the abandonment process has been carried out (see Abandonment process) The date the interest in the tenancy ends in this case is not less than 8 weeks after the second Abandonment notice is issued The Abandonment certificates/documents should be attached to the original tenancy agreement.

Should the tenancy have rent arrears at the date of ending a joint tenancy – this arrear will be split equally between the two tenants as at that date and a repayment agreement arranged for the outgoing tenant to repay their portion of the debt. In certain circumstances the remaining tenant can take full responsibility of the full arrear, however they must sign to agree they are doing so.

In the instance of any dispute over who remains in the property on the ending of a relationship between joint tenants where both tenants wish to remain in the property, Osprey Housing will refer both tenants to seek their own legal advice or mediation services. Until such a dispute is settled between the tenants they will both remain liable for the tenancy.

In relation to Joint Tenancies ending on the basis of domestic abuse, discretion will be applied on approval of the Director of Housing Services to reduce the notice period if both parties sign the relevant documents.

### **3.6 Lodgers**

Tenants may apply for a lodger to reside with them if the property is large enough and will not result in overcrowding. The tenant must disclose information on the application form to ensure they are not benefitting financially from charging more than 50% of the rent.

If a tenant has a lodger reside with them they will remain responsible for the behaviour of the lodger and for the condition of the property. The tenant remains responsible for the payment of rent and any other charges direct to Osprey. The lodger will have no rights to the tenancy.

Applications will be reviewed annually and permission can be removed if there are issues in relation to property condition, anti-social behaviour or other tenancy related issues.

### **3.7 Reasonableness and grounds for refusing consent**

In all aspects of managing tenancies the consent will not be refused unreasonably. Reasonableness is not defined legally and each case must be considered on its merits and the reasons for refusal communicated to the applicant/tenant. Specific reasons mentioned in the Housing (Scotland) Act where it may be reasonable to refuse consent:

- A Notice of Proceedings has been served that specifies any of grounds 1 to 7 (Schedule 2)
- An order for recovery of possession has been made against the tenant
- Consent to the request would cause statutory overcrowding
- Proposed works by the landlord that would affect the accommodation to be used by the assignee, or other person living in the house as a result of the transaction
- Under occupation
- Consideration will be given for the use of adapted properties when the party leaving the property is the person requiring the adaptations.

Each of these refusal reasons will be assessed for merit on individual cases and the discretion of the Director of Housing Services can be applied where necessary.

Osprey Housing have the right to use a Short Scottish Secure tenancy (SSST) where this may be applicable or appropriate in certain circumstances.

### **3.8 Appeal**

Osprey Housing will notify the tenant in writing of its decision within 28 days of receiving their application for any of the processes listed within this policy. Where

consent has been refused we will advise the applicant of the reason/s for refusing consent. If Osprey Housing has not made a decision within 28 days of receiving the written application Osprey Housing will be deemed to have consented to the same under and in terms of Schedule 5, Part 2, Para 12 of the Housing Scotland 2001 Act.

Where permission is refused a letter must be sent advising the reasons for refusal and advising the applicant that they have a right of appeal against the decision. The letter will advise that any appeal should be made to the Senior Housing Officer (in the first instance) within 14 days of receipt of the refusal letter. If required subsequent appeals would be made to the Director of Housing Services.

Where the applicant is dissatisfied with Osprey Housing's decision, the applicant may seek further information and explanation of our decision and may exercise their right to appeal as set out in the Complaints procedure.

## **4. Equality and Diversity**

Osprey Housing is committed to ensuring and promoting diversity and equality of opportunity in housing, employment and provision of services for all people within its range of work. Osprey Housing will treat all people equally and in accordance with the Equality & Diversity Policy.

## **5. Monitoring & Reporting**

The following areas will be subject to monitoring on a continuing basis:

- i. Outcomes expected from the Scottish Social Housing Charter
- ii. Risk management – Strategic risk matrix and Key Performance Indicators
- iii. Training and information for staff

## **6. Review**

This policy will be reviewed every 3 years unless the following criteria dictate that it would be best practise to review sooner:

- i. applicable legislation, rules, regulations and guidance, both those which affect Osprey Housing directly and those which affect the resources available to significant numbers of our customers to enable them to sustain tenancies
- ii. changes in the organisation
- iii. continued best practice

**Osprey**  
**Equality Impact Assessment Tool**

**PLEASE READ THE GUIDANCE FOR COMPLETION: Equality Impact  
Assessment Guidance.doc**

Name of the <b>policy / project proposal</b> to be assessed	Managing Tenancies Policy	Is this a <b>new policy / proposal or a revision?</b>	Revision
Person(s) responsible for the assessment	DHS		
<b>1. Briefly describe the aims, objectives and purpose of the policy / proposal</b>	The Managing Tenancies Policy outlines how staff will respond to and complete applications for changes to tenancies.		
<b>2. Who is intended to benefit</b> from the policy / proposal? (e.g. <i>applicants, tenants, staff, contractors</i> )	Tenants, staff, applicants and any other party.		
<b>3. What outcomes are wanted</b> from this policy / proposal? (e.g. <i>the benefits to customers</i> )	To be ensure that we provide a consistent and fair service.		

**4. Which **protected characteristics** could be **affected** by the proposal? (tick all that apply)**

Age       Disability       Marriage & civil partnership       Pregnancy/maternity  
 Race  
  
 Religion or belief       Sex       Gender reassignment       Sexual orientation

**5. If the policy / proposal is not relevant to any of the **protected characteristics** listed in part 4, state why and end the process here.**

<b>6. Describe the <b>likely positive or negative impact(s)</b> the policy / proposal could have on the groups identified in part 4</b>	<b>Positive impact(s)</b> Provide a consistently fair and high level of estate management	<b>Negative impact(s)</b> We do not anticipate any negative impacts
<b>7. What <b>actions</b> are <b>required</b> to address the impacts arising from this assessment? (This might include; collecting additional data, putting monitoring in place, specific actions to mitigate negative impacts).</b>	To follow the policy	

Signed: D. Thompson (Job title): Director of Housing Services  
Date the Equality Impact Assessment was completed: 31/07/2024