

*Paragon Housing Association Limited*

**POLICY: TENANCY CHANGE POLICY**

**POLICY AREA: HOUSING MANAGEMENT**

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## 1. Introduction

1. Paragon Housing Association aims to ensure any voluntary changes to current tenancies are undertaken within the remit of existing legislation and good practice.
- 1.2 The main legislation used to determine policy and procedure in respect of changes to tenancies is the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014
- 1.3 This policy does not cover tenancy changes which are not instigated by the tenant, for example, Short Secure Tenancies and eviction action. Neither does it cover the voluntary ending of tenancies as requested by tenants.

## 2.. Succession

- 2.1 On the death of a tenant, there may be a right of succession to the tenancy for defined members of the tenant's family or household (see below). Certain household members of the tenant's family may qualify to succeed to the tenancy. Succession is a continuation of the existing tenancy and is not a new tenancy. In all cases the Association must have been informed that the person wishing to succeed to the tenancy is living in the tenancy, and with the exception of a married partner the house must have been their only or principal home for 12 months prior to the succession request.
- 2.2 A tenancy can only be succeeded to twice under the current legislation.

### **Who might have the right to succeed?**

- 2.3 The rights of succession of qualifying persons are at three levels, in order of consideration:

**Level 1** – the **joint tenant, tenant's husband/wife or co-habitee** can inherit the tenancy, if the house was their only or principal home at the time of the tenant's death. If the co-habitee is to succeed to the tenancy, they must have lived in the property for at least 6 months before the date the tenant died.

**Level 2** - if any of the qualifying persons at Level 1 do not want the tenancy, or if there is no joint tenant, wife/husband or co-habitee, **a member of the tenant's family** can succeed. The definition of family member is given at Appendix 1. They must be at least 16 years old at the date of death of the tenant and have lived in the property as their only or principal home at the time of death.

**Level 3** - if there is no-one at Level 1 or 2 able or willing to succeed to the tenancy, **a carer** living at the property can succeed. Again, they must be at least 16 years old and living in the property as their main or principal home at the date of death of the tenant. In addition, they must have been the carer of the tenant, or be a carer of a member of the tenant's family.

- 2.4 If there is more than one qualifying person within any of the 3 levels, they must decide amongst themselves who is to succeed to the tenancy. If they cannot agree within 4 weeks of the tenant's death, the decision will be made by the Association.
- 2.5 If a qualifying person living in the property does not wish to succeed to the tenancy, they should tell us in writing within 4 weeks of the date of death of the tenant. They legally have up to 3 months from the date of death to vacate the property. They will be charged for occupancy at the same rate as the rent on the property, but payments will be taken as 'in lieu of occupancy charges' and no SST will be created.
- 2.6 If a level 1 qualifier declines the tenancy, it is the landlord's responsibility to ascertain whether there are any level 2 qualifiers and to write to each such person, to advise them of their right to succeed. If a level 2 qualifier declines the tenancy, it is the landlord's responsibility to ascertain whether there are any level 3 qualifiers and to write to each such person, to advise them of their right to succeed.

### **Adapted Properties**

- 2.7 If the property has been designed or substantially adapted for a person with special needs, succession may only take place in the following circumstances:

The qualifying person is a Level 1 person AND it is the first succession of tenancy; or

The qualifying person is a Level 1 person, it is the second succession of the tenancy AND the qualifying person requires the property for their own special needs; or

The qualifying person is a Level 2 or Level 3 person AND he/she requires the property for their own special needs, regardless of whether it is a first or second succession.

Level of qualifier	Round of succession	Right to Succeed	Right to Success only if Qualifying person requires the adapted property
1	First	✓	
1	Second		✓
2	First		✓
2	Second		✓
3	First		✓
3	Second		✓

2.8 Where the qualifying person is unable to succeed to the tenancy because they do not require the designed or adapted property, the tenancy may be terminated and we will offer suitable alternative accommodation. In these cases the Association will check it's own waiting list and consult with the relevant Local Authority before reaching a decision on the succession.

### **Number of successions per tenancy**

2.9 A property can only be succeeded to twice. If a property has been succeeded to twice, the third death will end the tenancy, unless there is a surviving joint tenant, in which case the tenancy will continue.

2.10 If, after two successions, the second successor dies and there is a person in the household who would otherwise qualify to succeed to the tenancy (but is not an existing joint tenant), they will be allowed to remain in the property for a maximum of 6 months following the date of death of the tenant. The person will be offered an occupancy agreement or common law tenancy, in line with section 22a of the Housing (Scotland) Act 2001.

2.11 There is no right of appeal against decisions made on successions within the Housing (Scotland) Act 2001. However, as a matter of good practice, anyone dissatisfied with the decision made regarding a right of succession should be directed to the Association's Complaints Procedure.

2.12 Succession is an automatic right and cannot be refused on the basis of tenancy breaches by the deceased tenant.

2.13 The successor will receive a copy of the original tenancy agreement, plus a letter detailing the date of the succession and any other relevant information.

## **3. Assignment**

- 3.1 A tenant can pass their tenancy over to another person, who then becomes the tenant of the property. This is a continuation of the original tenancy and a new SST should not be signed.
- 3.2 Our consent is required for assignation requests. If we do not respond to a request for succession within 28 days of receiving the request, permission is granted by default.
- 3.3 In order to qualify for an assignation, the assignee must have resided in the property as his/her principal home for a minimum of 12 months before the request is received. We must also have been notified of the fact that the assignee is living in the property.
- 3.4 We may withhold consent if there are reasonable grounds to do so. See Appendix 2.
- 3.5 Where we have consented to an assignation, the assignee will receive a copy of the original tenancy agreement, plus a letter detailing the date of assignation and any other relevant information.

#### **4. Transfers of Tenancy**

- 4.1 This section details:

- Transfer of tenancy from tenant to spouse;
- Transfer from sole to joint tenancy;
- Transfer from joint to sole tenancy; and
- Termination of joint tenant's interest in tenancy.

##### **Transfer of tenancy from tenant to spouse**

- 4.2 A tenancy can be transferred from one spouse to the other, under the Matrimonial Homes (Scotland) Act 1981. Our consent is not required; however, we require a copy of the Application to be served on us, in case we wish to make representation in Court.
- 4.3 The transfer tenant in these cases will receive a copy of the original tenancy agreement, plus a letter detailing the date of transfer and any other relevant information.

##### **Transfer from sole to joint tenancy**

- 4.4 Any tenant is entitled to a joint tenancy with any number of members of their household provided the other proposed joint tenants are:
  - over 16 years of age; **and**
  - the property is their only or principal home; **and**
  - the property is not or will not be overcrowded.

- 4.5 The tenant and prospective joint tenant must apply in writing to advise who they want a joint tenancy with and when the new joint tenancy would start.
- 4.6 The proposed joint tenant must have lived at the property as their only or principal home for the 12 months before the application for a joint tenancy is submitted. The 12 month period cannot be less unless we have been told that the person is living in the property as their only home.
- 4.7 If we do not respond to a joint tenancy request within 28 days of receiving the request, permission is granted by default if 4.6 above applies.
- 4.8 If agreed, a new SST is issued to all new joint tenants. We may withhold consent if there are reasonable grounds to do so. See Appendix 2.

### **Termination of joint tenant's interest in tenancy**

- 4.9 A joint tenant can terminate his/her interest in the tenancy by providing 4 weeks written notice to Paragon and to the other joint tenant/s.
- 4.10 The consent of the non-entitled spouse of any joint tenant terminating their interest in the tenancy must also be obtained. This is a requirement under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- 4.11 Paragon will write to the terminating joint tenant, remaining joint tenant, non-entitled spouse and any other qualifying occupiers to advise of the tenancy change.
- 4.12 The remaining tenant in these cases will receive a copy of the original tenancy agreement, plus a letter detailing the date the change in joint tenancy status took place and any other relevant information.

## **5. Subletting and Lodgers**

### **Subletting**

- 5.1 All tenants have the right to sublet all or part of their property provided they have received written permission from us first. We will require in writing:

A copy of the Short Assured Tenancy Agreement to be made between the tenant and sub-lessee; and  
Confirmation that an AT5 will be served.

5.2 The Short Assured Tenancy Agreement should provide:

Dates of the sub-let period (for a minimum of six months and not to exceed 12 months); and  
The amount of rent to be charged and any other charges to be made (for example, deposit, furnishing charge).

5.3 In addition, the tenant should supply:

Details of the sub lessee and their household (name, previous address, date of birth); and  
Contact details for the tenant if the entire property is to be sublet.

5.4 We may withhold consent if there are reasonable grounds to do so. See Appendix 2.

5.5 During the period of the agreed sublet, the tenant remains responsible for the payment of rent and adherence to the tenancy agreement. Any housing management issues arising must be referred to the tenant and not the sub-lessee. However, we may seek an ASBO or other legal remedy against the sub-lessee where appropriate if there was serious anti-social behaviour.

5.6 Before granting permission, the Association must be satisfied that the payments for the accommodation must be reasonable (e.g. the tenant should not make unreasonable profit on the transaction).

5.7 The following conditions must be met during the terms of the sublet:

The house must not be overcrowded;  
The house must only be occupied by persons named in the sublet agreement; and  
Any change in the tenant's or sub lessee's circumstances must be reported to us immediately.

5.8 Our consent is required for subletting requests. If we do not respond to a request for a sublet within 28 days of receiving the request, permission is granted by default.

## **Lodgers**

5.9 All tenants have the right to take in a lodger or lodgers provided they have received written permission from us first. We will require in writing:

Details of the lodger or lodgers (name, previous address, date of birth);  
Dates of the lodging period (for a minimum of six months and not to exceed 12 months);  
The amount of rent to be charged and any other charges to be made (for example, deposit, furnishing charge); and  
A copy of the agreement to be made between the tenant and lodger.

5.10 We may withhold consent if there are reasonable grounds to do so. See Appendix 2.

5.11 During the period of the agreed lodging period, the tenant remains responsible for the payment of rent and adherence to the tenancy agreement. Any housing management issues arising must therefore be referred to the tenant as with any other tenancy.

5.12 Before granting permission, the Association must be satisfied that the payments for the accommodation must be reasonable and that the amount to be paid will not lead to the tenant making unreasonable profit on the transaction.

5.13 The following conditions must be met during the terms of the lodging agreement:

The house must not be overcrowded; and  
The house must only be occupied by persons named in the lodging agreement.

5.14 Our consent is required for lodging requests. If we do not respond to a request to exchange within 28 days of receiving the request, permission is granted by default.

## **6. Exchanges**

6.1 Tenants have the right to apply for an exchange with a tenant of a local authority or other Registered Social Landlord (RSL).

6.2 Our consent is required for exchange requests. The tenant must apply in writing. The tenant of the other landlord is also required to request the mutual exchange in writing from their landlord.

6.3 We may withhold consent if there are reasonable grounds to do so. See Appendix 2.

6.4 In order to qualify for a mutual exchange, the exchange must:



Have a suitable household size to meet the occupancy levels of our accommodation (for example, we would not allow a single person to exchange into a 3 bedroom property);  
Owe less than two months rent or have a repayment plan in place for a minimum of three months before the exchange request is received;  
Receive written permission for their landlord that the exchange can proceed; and  
Not be subject to a Notice of Proceedings for conduct or eviction action.

- 6.5 If we do not respond to a request to undertake a Mutual Exchange within 28 days of receiving the request, permission is granted by default.

## **7. Reporting**

- 7.1 Any cases which cannot be dealt with within the limits of this Policy must be referred to the Senior Housing Officer or Housing Manager for approval before a decision is reached.

- 7.2 The Senior Housing Officer will maintain a record of all cases dealt with under this Policy and will submit an annual report to the Housing Manager detailing the following for each category of tenancy change:

The total number of requests received;  
The number of approvals and refusals;  
The number of appeals against decisions taken and the number of these that were upheld or dismissed;  
A summary of individual cases where the Housing Officer had to seek approval before taking a decision.

## APPENDIX 1

**Member of the Family:** as defined by Section 108 of the 2001 Act – “Meaning of “family”, “spouse” and “cohabitation”:

For the purposes of this Act, a person (“A”) is a member of another’s (“B’s”) family if –

A is the spouse of B, or A and B live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex; or

A is B’s parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

For the purpose of subsection (1)(b) –

a relationship by marriage is to be treated as a relationship by blood,

a relationship of the half-blood is to be treated as a relationship of the whole blood,

the stepchild of a person is to be treated as that person’s child, and

a person brought up or treated by another person as if the person were the child of the other person is to be treated as that person’s child.

**Close relative:** a person is a close relative if:

he or she is the spouse or he or she cohabits with that person (whether the same or different sexes), or

he or she is that person’s parent, grandparent, child, stepchild, grandchild, brother or sister.

## APPENDIX 2

### Grounds on which the Association may refuse permission under the terms of this Policy

#### 1. Statutory Grounds

A Notice of Proceedings has been served on the tenants with regard to

'conduct' grounds (see Paragraphs 1 – 7 of Schedule 2 of the Housing (Scotland) Act 2001;

Eviction action is being pursued against the tenant under Section 16(2) of the Housing (Scotland) Act 2001;

We have reason to believe that the tenant is receiving a payment in respect of the change in tenancy;

The change in tenancy would lead to overcrowding.

#### 2. Other Reasonable Grounds

There are outstanding rent arrears on the account and the tenant has not been maintaining a reasonable arrangement to repay the debt (for a minimum of 3 months;

We have information (from official sources) regarding the person or persons who will become the tenant, sub-tenant or lodger that, were it in respect of a direct applicant for housing, would be sufficient to enable us to suspend that applicant from the housing list.<sup>2</sup>

**This list is not exhaustive. Any cases where it is considered that there are other reasonable grounds to refuse permission for any of the tenancy changes highlighted in this Policy should be referred to the Housing Manager.**