

Policy Name	Assignment Policy
Policy Category	Customer Services
Policy Number	TM016
Officer Responsible	Chief Executive
Application	Lochaber Housing Association
Scottish Housing Regulator Standard	Standards 1.3 & 2.4
Equality Impact Assessment Completed	Yes – 05/06/2021
Tenant Consultation	No - assignment content is the same as previous policy
Date to Management Board	June 2024
Next Review Date	June 2029

1.0 Introduction

- 1.1 Under the terms of the Scottish secure tenancy ("SST") agreement, and the short Scottish Secure Tenancy ("SSST"), tenants of Lochaber Housing Association Limited (the "Association") may pass on their tenancy and the tenancy rights and obligations to another person. This is known as an 'assignment'. Certain conditions apply, and the Association's written permission must always be obtained first.

2.0 Legislation

- 2.1 Scottish secure tenancies are governed by the Housing (Scotland) Act 2001, (the "Act") as amended by the Housing (Scotland) Act 2010 and the Housing (Scotland) Act 2014. Section 32 of the Act prescribes the conditions under which a tenancy may be assigned.

3.0 Information

- 3.1 In order to properly consider the application for an assignment of a tenancy, the Association should ensure that they have all the appropriate information required to sufficiently judge the application. The application form (Appendix 1) should be used but the Association are within their rights to request further information if required in particular circumstances.
- 3.2 The Association ensures that tenants are clearly advised of their rights and responsibilities regarding assignments through the following means:
- a) Guidance from their Housing Officer when explaining the Scottish Secure Tenancy agreement prior to signing the document;

- b) Clear information in the tenants' handbook;
- c) Information in the appropriate section in the Association's website.

4.0 Applying to assign a tenancy

- 4.1 If a tenant wishes to assign their tenancy, they must apply to the Association in writing. This should be done using the Association's application form (appendix 1). The Association will normally process applications to assign a tenancy within four weeks (28 days) of receiving an application. This is subject to any investigations which the Association is required to carry out.
- 4.2 Consent will be given or refused by the Association in writing. Where consent is refused, clear reasons for the refusal will be given in writing.
- 4.3 If the Association has not responded to a request within 28 days with a decision or reasons for a decision being delayed, that application will be deemed to have been approved by the Association.
- 4.4 Both assignee and assignor must consent to the assignment in writing. Both parties will therefore be required to complete the Association's standard deed of assignment (Appendix 2) in the presence of a member of Association staff. The assignee and assignor do not have to attend the same meeting in order to sign consent; however, consent from both parties must take place on the same day.

5.0 Conditions under which an assignment will be approved

- 5.1 In line with Section 32 of the Act, the Association will only give permission for an assignment where the assignee has lived in the property as their only or principal home, for at least six months prior to permission being sought for the assignment. From 1st November 2019, the Association will only give permission for an assignment where the assignee has lived in the property as their only or principal home for at least twelve months prior to permission being sought for the assignment. The Association are within their right to ask for proof of residency of the 12 months, such as utility bills registered in the assignee's name dated from 12 months or more prior to the assignment request.
- 5.2 From 1st November 2019, in calculating the twelve months prior to occupation required before consent will be given, the Association will only take into consideration any period of time after the tenant has notified the Association that an individual is living in the property as their only or principal home. Such notice could be given from 1st November 2018 onwards.
- 5.3 Although permission will not be refused unreasonably, the Association may also refuse permission in some cases: This will include but may not be restricted to situations where:

- The Association has not been notified that the proposed assignee has been living in the property as their only or principal home at least 12 months prior to the written request;
- a notice has been served on the tenant on any 'conduct' grounds of the Housing (Scotland) Act 2001;
- an order for recovery of possession has been granted against the tenant;
- the tenant will receive a payment, unreasonable rent or deposit for the transaction;
- the Association proposes to carry out work which will affect the accommodation available;
- the person applying to have the tenancy assigned to them would not normally have reasonable preference for an allocation to the property under the Housing (Scotland) Act 2001 as amended;
- the assignation would result in overcrowding as defined by section 135 of the Housing (Scotland) Act 2001 as amended;
- the assignation would result in under-occupation;
- where the proposed assignee has been subject to formal action for breach of tenancy or for anti-social behaviour within the last 5 years;
- the current tenant has substantial housing debts;
- where the current tenant has not been acting in a satisfactory manner and is currently the subject of a formal warning or legal action by the Association.

Please Note: In addition to ensuring that the assignee has 'reasonable preference' in terms of the Housing (Scotland) Act 1987, the Association should be clear that the assignee sufficiently meets the Association's allocations policy and the application for an assignation can be refused on this basis.

6.0 Rent arrears

6.1 When a tenancy is assigned, it is generally expected that the assignee takes on joint and several responsibility for any existing rent arrears. However, the Association recognises that there may be circumstances in which any rent arrears should be divided between the assignee and the assignor.

6.2 In such circumstances, the Housing Services Co-ordinator will decide whether the Association's permission to assign will be conditional upon a division of the debt, or on all debts being cleared. The assignee and assignor will then be required to accept these terms in writing before the assignation can proceed.

7.0 Monitoring

7.1 Ongoing monitoring will take place of all assignments. The numbers of applications, approvals and reasons for refusals will be recorded and reported to the Board of Management and the Regulator as required.

8.0 Appeals

- 8.1 In the event of a refusal to assign the tenancy, any tenant who feels their application has been unfairly dealt with or wishes to seek a review of the decision they can submit this in writing within 14 days stating the reason for the review. This should be made to the Housing Services Co-Ordinator (HSC). Where the HSC has made the decision, this should be reviewed by a member of the Senior Management Team. Any applicant who feels their application for sublet has been unfairly dealt with by a member of staff in term of the SPSO guidelines can also raise a customer complaint using the Association's complaints policy.

The applicant can also lodge a summary appeal with the Sheriff Court within 21 days of notification of the Association's decision if they think an assignation has been refused unreasonably.

9.0 General Data Protection Regulations

- 9.1 The organisation will treat personal data in line with our obligations under the current data protection regulations and our own data protection policy. Information regarding how personal data will be used and the basis for processing personal data is provided in the LHA Group's privacy notices.

This policy can be made available in other formats, for example in large print, audio format or Braille, the document may also be available in other languages, in full or summary form, as appropriate.

10. Equality, Diversity, and Inclusion

- 10.1 This policy reflects the Association's commitment to meeting our equality obligations in advancing equality, promoting good relations between protected characteristics, and eliminating discrimination in the way we provide our services.

It also aims to reflect our commitment to considering the Equalities and Human Rights impacts of what we do as an RSL.

- 10.2 The Association assesses and reviews where appropriate new and revised policies and procedures, and an Impact Assessment is available to support this policy.