

SERVITE HOUSING ASSOCIATION

POLICY ON ASSIGNATIONS, SUBLETTING & LODGERS

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Author:	Housing Services Manager
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POLICY STATEMENT: ASSIGNATIONS, SUBLETTING & LODGERS

1.0 Introduction

- 1.1 All Scottish Secure Tenants have a legal right under the Housing Scotland Act 2001 to request permission to assign their tenancy to another person; sub let their property or take in a lodger. 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 a reasonable timescale.
- 1.2 The 2001 Act lists some reasons which could be considered legitimate reasons for refusing such requests, but the list is not exhaustive, i.e. landlords may have other reasons and, in the event of any 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;
 - an order for recovery of possession of the house has been made against the tenant under section 16 (2) of the Act;
 - it appears to the landlord that the tenant is to receive a payment for the assignation, subletting or other transaction which is other than a reasonable rent or a reasonable and returnable deposit;
 - the request would lead to overcrowding;
 - the landlord 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.

2.0 Requests to Assign a Tenancy

2.1 In the case of Assignation request there is a requirement of the applicant to have lived as part of the household for at least 6 months. There has to be a record of this and supporting documents as evidence.

- Servite will normally refuse the request where we have served a Notice of Proceedings for rent arrears or where there have been other breaches of the tenancy, such as Anti Social Behaviour, against which we have taken action. In arrears cases, where the prospective assignee is willing to agree in writing to take on the arrears currently owed by the tenant, Servite will normally agree to the assignation. Servite will liaise with its lawyers in each such case to ensure that the appropriate letter is sent to and signed by the prospective assignee.
- Where there are no arrears and no action is being taken in relation to any other breaches of the tenancy, Servite will consent to the assignation, but ask

the prospective assignee to sign a new Scottish secure tenancy agreement as this avoids any ambiguity over the status of assignees. It is entirely up to the assignee whether s/he signs a new agreement - it will normally be in their interests to do this – but we recognise we cannot enforce this, and an indication that the assignee does not wish to do this will not normally lead to Servite refusing the assignation.

- In line with case law Servite would also consider the size of accommodation and the proposed household composition to ensure we make best use of stock when considering requests to assign tenancies
- Servite will also ensure that a request to assign a tenancy is not being made to circumvent the normal allocation process; this will be done by checking the applicant has been part of the household and that it would not be appropriate or possible to move with the tenant to their new accommodation.

3.0 Requests to Sublet or take in Lodgers

3.1 Tenants wishing to sub let their property or take in a lodger must make a written request stating the duration, charges and details of the proposed sub tenant / lodger. As with Assignations Servite will normally refuse the request where we have served a Notice of Proceedings for rent arrears or where there have been other breaches of the tenancy, such as Anti Social Behaviour, against which we have taken action.

3.2 Servite will also refuse the request if it leads to overcrowding of the property. Servite will not normally give permission to allow the tenant to sublet or take in a lodger for more than 6 months before being reviewed; as the tenant has to occupy the property as their principle home.

4.0 Refusal and Appeals

4.1 If a tenant is unhappy with the decision made on the request by their housing officer they can appeal in writing to the Housing Services Manager.

4.2 If they remain unhappy they have the right to raise summary proceedings in court and advice will be given about appropriate agencies to support this.

5.0 Equal Opportunities

5.1 This policy complies with Servite Housing Association's Equal Opportunities Policy. The Association will ensure the promotion of equal opportunities by publishing information and documentation in different formats/languages as required. The Association will ensure that no individual is discriminated against on the grounds of sexual or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or other personal attributes, including beliefs, or opinions, such as religious beliefs or political opinion.

- 5.2 All communication with tenants or other customers will be in 'plain language' and it will be made clear who the most appropriate person is to contact in the event of a query. The Association will make appropriate arrangements for communicating with tenants and other customers who have special needs such as people with sight, hearing or learning difficulties, for example by using signers.

6.0 LEGAL AND REGULATORY FRAMEWORKS

- 6.1 The Association will ensure that the policy complies with current legislation and promotes good practice. The legislation particularly relevant to this Policy includes:

The Data Protection Act 1998 governs the way information is obtained, recorded, stored, used and then eventually destroyed. The Association complies with all the requirements of the Act and ensures that personal data is processed fairly and lawfully, that it is used for the purpose it was intended and that only relevant information is used. The Association will ensure that information held is accurate, and where necessary kept up to date and that appropriate measures are taken that would prevent the unauthorised or unlawful use of any personal information given.

Freedom of Information Act (Scotland) Act 2002: entitles members of the public to receive information that they request from a public authority, subject to certain exemptions such as the need for the protection of personal data, commercial sensitivity or national security. Although not bound by the Freedom of Information Act (which currently does not extend to RSLs), SHA is not bound by but aims to meet the spirit of the legislation.

- 6.2 The following Scottish Housing Regulator Performance Standards are particularly relevant to this Policy:

AS1.3 – We offer the most secure form of tenancy compatible with the purpose of the housing. The agreement makes clear the rights and duties of the tenant and landlord. We act to uphold these rights and duties in a fair and responsible manner.

GS1.2 – we have high-quality written policies and procedures to guide our actions.

GS1.3 - we actively strive for continuous improvement in all we do.

GS2.2 - we have published and are implementing a sound strategy for encouraging and supporting tenants, residents and service users to participate actively in all areas of our work. We support tenants who take an active interest in managing their homes.

GS3.1 – we place the people who want to use our services at the heart of our work. We treat people with respect and are responsive to their views and priorities.