

Introduction and Overview

The purpose of this procedure is to guide staff through the processes that should be followed when dealing with applications for joint tenancy, termination of joint tenancies and abandonment of joint tenants.

Joint Tenancy Procedures

The document outlines the Association's procedures in relation to the following sections:

1. Legal Provisions;
2. Applying for a Joint Tenancy;
3. Reasons for Refusal;
4. Creation of a Joint Tenancy;
5. Termination of Joint Tenants Interest in the Tenancy;
6. Termination of Joint Tenancy as a Result of the Death of a Tenant;
7. Abandoning a Joint Tenants Interest in the Tenancy;
8. Joint Tenancy Register.

1. Legal Provisions

The legal provisions that govern the application and termination of joint tenancies are contained within the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014.

2 Applying for a Joint Tenancy

Any tenant of the Association is entitled to apply for a joint tenancy with one or more individuals. Where a tenant is looking to create a joint tenancy, both the existing tenant(s) and proposed joint tenant must apply in writing to the Association and must obtain written consent from the Association.

In order for a tenant to create a joint tenancy, the following eligibility criteria must be met:

- The proposed joint tenant must have lived at the property as their only or principal home for the twelve months before the tenant applies for them to become a joint tenant; and
- The tenant, any joint tenant or proposed joint tenant must have notified the Association that the person they wish to become a joint tenant with is living in the house. The twelve-month period only starts from when the Association is notified that the person is living in the property.

The twelve-month period applies to anyone wanting to be a joint tenant including the tenant's spouse, civil partner or co-habiting partner.

Where a written or verbal enquiry is made about a potential joint tenancy staff should issue an Application Form Covering Letter and Application Form for Joint Tenancy to the tenants address within two working days of the original enquiry being made. When applying for a joint tenancy the proposed joint tenant must provide suitable identification and any other relevant documents such as a marriage certificate with the completed Application Form. Where an Application Form is received by the Association, staff should issue an acknowledgement letter to the tenant within three working days confirming that the application will be processed, and a response issued within one month.

Where an application is approved, staff should issue a decision letter to the tenant confirming that the application has been successful. The letter will ask both the existing tenant(s) and proposed joint tenant to attend a specified appointment time to sign an amended tenancy agreement.

Where an application is refused, staff should issue a decision letter to the tenant confirming that the application has been unsuccessful and giving the reasons for refusal. The letter will also contain details of the Association's appeals process. The Association does not refuse permission unreasonably but reasonable grounds for refusing an application for joint tenancy are detailed in Section 3 of this procedure.

If the Association fails to respond to the application for joint tenancy within one month of the date of application, it will be assumed under the terms of the Scottish Secure Tenancy Agreement and Short Scottish Secure Tenancy Agreement that approval has been granted.

3 Reasons for Refusal

Any tenant of the Association is entitled to apply for a joint tenancy with one or more individuals. Applications for joint tenancies will not be refused unless the Association has reasonable grounds for doing so.

The legislation does not clearly define what is regarded as "reasonable grounds" for refusal, however, the following grounds are considered reasonable for refusing an application for joint tenancy:

- The property has not been the proposed joint tenant's only or principal home during the twelve months immediately before the application is received;
- The tenant, joint tenant or proposed joint tenant have failed to notify the Association that the person they wish to assign to is living in the property.
- 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 of the Housing (Scotland) Act 2001;
- A Decree for recovery of possession has been granted by the court;
- The proposed joint tenant(s) has outstanding debts with the Association or other social landlord amounting to more than one month's rent and has not adhered to a reasonable repayment arrangement for a minimum of three consecutive months;
- The original joint tenant has outstanding debts with the Association or other social landlord amounting to more than one month's rent and has not adhered to a reasonable repayment arrangement for a minimum of three consecutive months;
- The proposed joint tenant(s) was previously evicted for anti-social behaviour within the last five years (this includes eviction by other social landlords);
- The Association has commenced legal action against the original tenant to recover the property. This includes abandonment proceedings;
- The Association has commenced legal action against the proposed joint tenant to recover the property. This includes abandonment proceedings;
- The approval of the joint tenancy application would lead to overcrowding.
- The Association believes that the tenant is to receive a payment, in return for making the application; and
- The Association proposes to carry out work to the house or the building and the proposed work would affect the accommodation that would be occupied by the proposed joint tenant.

4. Creation of a Joint Tenancy

Where an application for joint tenancy has been approved, staff must arrange for all joint tenants to sign a new tenancy agreement. In all cases the original date of entry will be retained. All joint tenants will be mutually and severally liable for all responsibilities outlined in the tenancy agreement.

When a new tenancy is signed, Housing Management must provide Finance with an instruction to update the tenancy records. Where a new tenancy is signed, the original date of entry applies.

5. Termination of a Joint Tenants Interest in the Tenancy

A joint tenant may terminate their interest in the tenancy by giving both the Association and each of the other joint tenants twenty-eight days written notice. Staff should ask any joint tenant looking to terminate their interest in the tenancy to give twenty-eight days' notice by completing a Termination of Joint Tenancy Notice. Where a joint tenant writes to the Association providing twenty-eight days' notice that they wish to terminate their tenancy, staff should also encourage the joint tenant to complete a Termination of Joint Tenancy Notice.

Where a Termination of Joint Tenancy Notice or letter is received from a joint tenant, the twenty-eight day notice period will commence on the day that the notice is received by the Association. On receipt of notice from a joint tenant, staff must acknowledge the notice by issuing the joint tenant with a letter within three working days confirming that their interest in the tenancy will be terminated twenty-eight days from the date that the notice was received.

To ensure that other joint tenants have been given the relevant notice, staff must write to the remaining joint tenants within three working days confirming that notice has been received from the outgoing joint tenant.

After the twenty-eight day notice period has expired, the remaining tenant will be required to sign a new tenancy in their own name although the original date of entry will be retained.

Housing Management must provide Finance with an instruction to update the tenancy records.

6. Termination of Joint Tenancy as a Result of the Death of a Tenant

In the event that a tenant dies, the surviving tenant will be required to complete an Application for Succession as a Level 1 Successor in accordance with the Association's Succession Policy and Procedures. The surviving tenant will also be required to provide a copy of the death certificate when applying to succeed the tenancy as a sole tenant. Once the application for succession has been granted the surviving tenant will be required to sign a new tenancy in their own name although the original date of entry will be retained. Irrespective of when the new tenancy is signed, the deceased tenants interest in the tenancy will be terminated on the date of death.

Housing Management must provide Finance with an instruction to update the tenancy records.

7. Abandoning a Joint Tenants Interest in the Tenancy

Where the Association has reasonable grounds for believing that a joint tenant is not occupying the property and does not intend to occupy it as their home, the tenancy will be terminated in accordance with the Association's Abandonment procedures.

8. Joint Tenancy Registers

The details and outcomes of all Applications for Joint Tenancy received must be recorded in the Joint Tenancy Register. The details of all termination notices from joint tenants must be recorded in the Joint Tenancy Register.

Details of all abandonments by joint tenants will be kept in casework file in Housing Managements computerised Abandonment Directory.