



# ASSIGNATION POLICY

<b>POLICY IMPLEMENTATION CHECKLIST</b>	
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Health & Safety compliant:	YES
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# ASSIGNATION POLICY

## 1.0 INTRODUCTION

This Policy outlines the Co-operative's requirement to accept and consider any application for an assignation of a tenancy as set out under the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

An assignation describes the process that takes place when a tenant transfers the rights and responsibilities of their tenancy to another person (assignee) with the Co-operative's permission.

The Co-operative is responsible for ensuring the policy and procedures are applied and comply with regulatory and legislative requirements.

## 2.0 POLICY AIMS AND OBJECTIVES

The Assignation Policy aims to meet all legislative and regulatory requirements that complies with its landlord obligations in respect of managing assignation requests.

The primary aim of this Policy is to put a structure in place that ensures the tenancy of properties is not passed to another person in an illegal or uncontrolled way. The Policy is also intended to provide guidance to staff on implementing the correct procedures and to tenants on the requirements placed on them.

The key objectives are:-

- Ensuring the Co-operative complies with the law and operates in accordance with good practice;
- Ensuring that tenants meet all their statutory obligations relating to the assignation of their tenancy;
- Recognising and protecting the legal rights of the tenant and other members of the household;
- Ensuring that all applications to assign a tenancy are treated in a fair and equitable manner;
- Allowing the Co-operative to keep accurate records of who is residing in its properties;
- Ensuring the assignation of tenancy is open and accessible to all tenants;
- Ensuring the legal tenant of the property is living in the property and fulfilling their obligation to use the house as their only or principal home.

### 3.0 GENERAL PRINCIPLES

A Scottish Secure tenant is not allowed to assign their tenancy without first obtaining the Co-operative's written consent. Such consent cannot be unreasonably withheld.

Tenants have the right to assign their tenancy provided the eligible criteria outlined in the policy are met.

Consent to assign a tenancy will only be given by the Co-operative after consideration of the circumstances of the tenant and the proposed assignee.

This is not the formation of a new tenancy, as the assignee will take over all matters relating to the tenancy, including any outstanding debt. It is however, a permanent arrangement whereby the assignee has all the statutory and contractual rights and obligations of the tenancy adopted.

It is the responsibility of the principal tenant to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers, of the assignation.

### 4.0 WHO CAN ASSIGN

Before a tenant can assign the tenancy of their home to someone else, they must apply in writing to the Co-operative for permission to do so and get our written consent.

We will permit an assignation only when:-

- The house must have been the tenant's only or principal home during the 12 months immediately before the tenant applies for written permission to assign their tenancy **and**
- The person that the tenant wishes to assign their tenancy to must have lived at the property as their only or principal home for the 12 months immediately before the tenant applies to assign their tenancy **and**
- The tenant, joint tenant or person they wish to assign their tenancy to must have notified the Co-operative that the person they wish to assign the tenancy to is living in the house. The 12 month period does not start until the Co-operative has been informed in writing that the person is living in the property as their only or principal home and that permission to reside has been requested and approved by the Co-operative.

This notification must be in writing we will **not** accept verbal notification.

To satisfy this requirement, the proposed tenant must have:

- Registered with, and been accepted by, the Co-operative as a member of the household; **AND**
- Declared as part of the household on Housing Benefit/Universal Credit claims; **AND**

- Declared as part of the household with Council Tax Department; AND
- Claimed any benefits from that address; AND
- Been able to provide evidence of residency.

In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home, no further notification is required.

## **5.0 ASSESSMENT OF A REQUEST TO ASSIGN A TENANCY AND GROUNDS FOR REFUSAL**

The assessment of an application for permission to assign a tenancy will take account of both the tenant's and the proposed assignee's circumstances and in all cases must satisfy the criteria set down in Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

The Co-operative will not withhold consent unreasonably, but may refuse consent to assign the tenancy on the grounds which include:-

- Where the proposed assignee has not occupied the home as their only or principle home for 12 months immediately preceding the tenant's formal application to assign and the tenant did not notify the Co-operative in writing of their residency;
- A Notice of Proceedings for Recovery of Possession has been served on the tenant specifying one of the "conduct" grounds set out in paragraphs 1 to 7 (Schedule 2) of the Housing (Scotland) Act 2001 e.g. rent arrears, anti-social behaviour etc;
- An order for recovery of possession has been made against the tenant;
- Consent to the assignation request would cause overcrowding or under occupancy;
- The property was designed or substantially adapted for a person with additional needs (e.g. wheelchair use) or additional services (e.g. sheltered housing) which are not required by the assignee;
- Another person's occupancy rights are likely to be adversely affected;
- The proposed assignee is below 16;
- The proposed assignee is unable to fulfil the terms the agreement, for instance, to repay debt transferred with the tenancy or cover the rental charge for the property or any outstanding debt in relation to their occupancy of the property;
- The proposed assignee has previously been evicted for serious anti-social behaviour or has been involved in the perpetration of anti-social behaviour as confirmed by another agency e.g. Police Scotland or has had an ASBO granted against them or a member of their household;

- The house is unsuitable for the prospective assignees needs;
- The proposed assignee cannot provide evidence to support their claim they have lived at the property for the previous 12 months;
- The Co-operative has reason to believe the tenant has received a payment in cash or in kind to affect the assignation;
- There is substantial damage to the property caused by the tenant, a member of the household or visitor(s) to the property, however they will be given the opportunity to make good any damage at their own expense and have their application reconsidered;
- Either party has given false or incomplete information about the application;
- Proposed works by the Co-operative that would affect the accommodation to be used by the assignee, or other person living in the house as a result of this.

The list while comprehensive is not exhaustive and each application will be fully assessed by the Housing Officer(s) before granting or refusing consent.

## **6.0 ASSIGNATION PROCEDURE**

Any tenant wishing to assign their tenancy must complete an Assigantion application form which is available on request from the Co-operative.

On receipt of the application an acknowledgement will be issued to the tenant confirming that a Housing Officer will carry out all appropriate eligibility checks including carrying out a home visit to discuss the implications of the assignation to both the tenant and the assignee and to inspect the property.

Where the proposed assignee has held a tenancy within the last 5 years, the Co-operative will request tenancy references as appropriate, having first obtained the permission from the proposed assignee to do so.

Consent or refusal of the application to assign the tenancy will be given within 28 days of receipt of the application. If the request has been refused the reason will be given.

If there is insufficient information available to allow a decision to be made, the request will be refused, with the reasons given and the tenant advised to re-apply when the information is available.

The Co-operative will not withhold consent unreasonably, however, each case will be considered individually and consent will be refused if the Co-operative considers it is reasonable to do so.

Where the request to assign is approved, the new tenant (assignee) will acquire the rights and obligations of the previous tenant. The assignee will sign a Deed of Assignment and the terms of the existing tenancy agreement will be fully explained with a copy provided.

## **7.0 APPEALS AND COMPLAINTS**

In the event of a claim to succession being refused and the applicant is unhappy about the decision they will be required to appeal in writing to the Co-operative within 28 days of receiving the decision.

The Co-operative will review the appeal and provide the applicant with the result of their decision in writing.

If the applicant is still dissatisfied, recourse can be sought through the Co-operative's Complaints Policy.

## **8.0 EQUALITY & DIVERSITY**

The Co-operative is committed to promoting an environment of respect, understanding, encouraging diversity and eliminating discrimination by providing equality of opportunity for all.

We will endeavour to ensure a fair and equal service to everyone and that all services are carried out in an undiscriminating manner in line with the Co-operative's Equality and Diversity Policy.

In particular, we will not discriminate on the grounds of age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender reassignment, sex and sexual orientation.

We will ensure that everyone has equal access to information and services to meet specific needs. Upon request we will make available documents in a range of alternative formats/languages.

## **9.0 GENERAL DATA PROTECTION REGULATION (GDPR)**

The Co-operative will process information and data contained within the application in accordance with its policies and procedures relating to the General Data Protection Regulations.

Information regarding how data will be used and the basis for processing data is provided in the Co-operative's Fair Processing Notice.

## **10.0 POLICY REVIEW**

This Policy will be reviewed on a 5 yearly basis or earlier if the legislation changes or to ensure that its aims and good practice are being met.