Tenancy Changes Policy

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Related policies and procedures	Allocations Policy

New Gorbals Housing Association (NGHA) is registered with the Scottish Housing Regulator (No. HAL 211), as a charity in Scotland (SC041164) and is a registered society under the Co-operative and Community Benefit Societies Act 2014 (No 2309 RS). In the Property Factors Register under section 6 of the Property Factors (Scotland) Act 2011, registration number PF000338.

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1.0 INTRODUCTION

1.1 New Gorbals Housing Association (NGHA) tenants are entitled to a number of rights through their Tenancy Agreement (TA), which they signed upon their tenancy commencing. A number of these rights refer to changes in their tenancy. This policy sets these rights out, how tenants can exercise them and how NGHA will respond.

1.2 The four main tenant's rights explored in this policy relate to.

Succession - When a tenancy is passed to another household member resident in the house/dwelling on the tenant's death, this is called a succession. There are certain limitations on the household members who can succeed to a tenancy.

Assignation - When a tenant requests that the tenancy is given to somebody else, this is called an assignation. The different types of assignations that can occur, and the circumstances in which they may or may not be approved.

Subletting -This is an agreement whereby another person/s takes over the whole tenancy from a tenant for a limited period. This usually arises due to the tenant leaving the property, due to taking an extended holiday or working away from home, for example.

Single to Joint Tenancies – when a single tenant requests that another person becomes a joint tenancy of their property.

1.3 Rights granted to tenants differ depending on the tenancy type, i.e. according to whether the tenancy in question is a Scottish Secure Tenancy (SST), or Short Scottish Secure Tenancy (Short SST). Each section of the policy starts with appropriate legal principles and conditions, followed by details of general issues to be considered, and finally details of any specific issues relevant to the type of tenancy change in question.

2.0 POLICY AIMS & OBJECTIVES

2.1 The objective of this Policy is to set out rules for tenancy changes that apply to a Scottish Secure Tenancy and Short Scottish Secure Tenancy.

3.0 EXPECTED OUTCOMES

Key outcomes of operating an effective Tenancy Changes Policy include:

- Tenants and staff are clear on the rights of tenants when approaching changes to their tenancy.

4.0 SUCCESSION

4.1 The Housing (Scotland) Act 2025 amends Schedule 3 to the Housing (Scotland) Act 2001 from 1st August 2026, introducing a new 6-month qualifying period and notification requirement.

4.2 The 6-month period cannot begin unless we have been told that the individual is living in the property as their only or principal home. We must have been told that by the tenant, a joint tenant or by the individual who wishes to succeed e.g. the co-habitee, family member or carer, as described in the succession priority levels below. The Association must have been notified of, and given consent, to the proposed successor's residency in.

4.3 A 'family member' is defined within Section 83 of the Housing (Scotland) Act 1987 and includes your spouse, civil partner, co-habitee, parent, grandparent, child (including a child treated by you as your child and stepchildren), grandchild, brother, sister, uncle, aunt, niece, nephew and any of those of your spouse.

4.4 The length of time they have been living in the property starts from the date NGHA is notified that the person is living in the property as their only or principal home.

Qualifying Persons

Schedule 3 of the Act sets out those who would qualify to succeed to a tenancy and puts them into three levels of priority as follows:

Level One – First priority

A person qualifies as having priority to succeed to a tenancy if they are:

- The tenant's spouse, civil partner or co-habitee if the house was their only or principal home at the time of death, or

- A joint tenant, if the house was their only or principal home at the time of the tenant's death.

In the case of a co-habitee (of the opposite or same sex), they must also have occupied the house as their only or principal home for at least 6 months immediately prior to the tenant's death.

If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, within 4 weeks of the death of the tenant or of the date of notification by us of the right to succeed to the tenant, the Association will decide.

Level Two - Second Priority

A person has second priority to succeed to a tenancy if they are a member of the tenant's family, as long as:

- they are aged at least 16 years at the date of the tenant's death, and

- the property was their only or principal home at the time of the tenant's death and had been so for a period of not less than 6 months prior to the date of death of the tenant.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

Level Three - Third Priority

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- they were aged at least 16 at the date of the tenant' death;
- the property was their only or principal home at the time of the tenant's death and had been so for a period of not less than 6 months prior to the date of death of the tenant.
- they gave up another only or principal home before the death of the tenant.
- they are providing, or have provided, care for the tenant or a member of the tenant's family.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

Rules of Succession

Under the provisions of the Housing (Scotland) Act 2001, on the death of a Scottish Secure Tenant the tenancy can only be succeeded to twice.

Where a tenancy has already been succeeded to twice, on the death of the tenant who inherited the tenancy through a second succession the tenancy will normally be terminated, unless there is a surviving joint tenant who continues to use the property as their only or principal home.

Declining the Right to Succession

Should a qualifying person with succession rights decline the tenancy, they must give NGHA written notice within four weeks of the tenant's death or from receiving notification of their right to succeed, as applicable.

Special Rules

Schedule 3, Section 5 of the Housing (Scotland) Act 2001 sets out the provisions that apply where a property has been specially designed or substantially adapted for occupation by a person who has specific needs.

NGHA considers that all its rented accommodation for older people (that is amenity and retirement housing), as well as any other specially designed or adapted property that falls out with the category of standard general needs stock, will fall within the criteria of special needs housing as described in the Act.

Where a property falls into the category of specially adapted housing, the succession rights are as follows. A person qualifying at Level One has the automatic right to succeed to the tenancy, regardless of whether they themselves have the specific needs which are provided for by that accommodation. Any other persons who would normally qualify at Level Two or Level Three will only be eligible to succeed to the tenancy if they have the special needs requiring accommodation of that kind.

Where a tenancy is terminated under these special rules and there is a person who, but for these rules, would otherwise have qualified for succession, NGHA must make suitable alternative accommodation available to them.

Exceptional Circumstances

When considering all applications for succession, at what will be a difficult time for applicants coping with bereavement, NGHA will ensure that they do so sensitively and quickly. We will consider all the circumstances of the individual case and ensure that appropriate checks are made to determine whether the applicant meets the succession criteria.

Depending on the individual circumstance there will sometimes be cases where NGHA considers it appropriate to allocate a tenancy to the applicant, for example the existing tenancy or the tenancy of another property. In these cases, a new tenancy will be granted, and it will not be a succession.

5.0 ASSIGNATION

5.1 The house must have been the tenant's only and principal home during the 12 months immediately before the tenant applies for written permission to pass their tenancy to someone else (previously there was no qualifying period); and the person the tenant wishes to pass their tenancy to must have lived at the property as their only or principal home for the 12 months before they apply; and the tenant, joint tenant or person they wish to assign their tenancy to must have notified the Association that the person they wish to assign the tenancy to is living in the house. The 12-month period does not start unless the Association has been notified that the person is living in the property as their only and principal home and has given consent.

5.2 The length of time they have been living in the property starts from the date the Association are notified that the person is living in the property as their only or principal home.

5.3 If the tenant notified the Association of someone living with them before 1 November 2019 that time will count towards the length of time they have been living at the property.

Applying for Consent to Assign a Tenancy

Tenants wishing to assign their tenancy firstly must apply in writing to NGHA and provide the following information:

- Details of the proposed transaction including details of the assignee, and any other persons who will be occupying the house.

- Details of any payment which has been or is to be received by the tenant in consideration of the transaction.

- The date the tenant wishes the transaction to take place.

In the case of a joint tenancy, the application must have been agreed and signed by each tenant.

If applicable, any spouse, civil partner or co-habitee must confirm that they agree to the proposed transaction. Where there is a spouse or civil partner no longer residing in the property who still has occupancy rights under the Matrimonial Homes legislation, the tenant must get confirmation from them that they do not intend to invoke these rights.

Granting Permission to Assign a Tenancy

Prior to granting permission, NGHA must be satisfied of the following: The tenant, joint tenant or person they wish to assign their tenancy to must have lived at the property as their principal home for 12 months before applying to assign their tenancy and the Association was notified and granted permission. The 12-month period does not start unless the Association has been notified.

The proposed assignee is aged sixteen or over and there are no anti-social behaviour issues.

If approved, whilst a new tenancy is not created, a Deed of Assignment must be signed by both parties.

NGHA must give its written consent or refusal to the tenant within one month from the date all the information required for an application has been received. In the case of a refusal, NGHA must detail its reasons for this.

If NGHA fails to comply with this timescale, it will be assumed that consent has been granted.

Conditions of Assignation

An assignation means that the existing tenant ceases to have any rights in relation to the tenancy; the legal interest in the property, including the rights and obligations of the tenancy agreement, are transferred to the assignee. However, an assignation does not create a new tenancy; the existing tenancy continues. Following an assignation, the existing tenant ceases to have any rights in relation to the tenancy.

Although an assignation does not create a new tenancy, the assignee takes over all rights and responsibilities as stated in the tenancy agreement and must comply with them as a tenant.

Withholding consent to assign a tenancy.

NGHA will consider all written requests from tenants to assign their tenancy. Consent will only be withheld if there are reasonable grounds for doing so.

Reasonable grounds for refusing consent, as highlighted in Section 32 Subsection (3) of the Housing (Scotland) Act 2001, include the following:

- NGHA has served a notice of proceedings for recovery of possession on the tenant, specifying one of the grounds 1 to 7 in Schedule 2 of the Act;

- an order for recovery of possession has been made against the tenant;

- it appears that a payment has been or is to be received by the tenant in consideration of the assignation; the proposed transaction would result in the property being overcrowded;

- NGHA intends to carry out work on the property which would affect the part of the house connected with the proposed transaction;

- where NGHA would not give the person, the tenant wishes to pass the tenancy to reasonable preference under the allocations policy; and

- where NGHA is of the opinion that the assignation would result in the home being under occupied.

In addition, other grounds which may lead to NGHA reasonably withholding consent include, but are not limited to, the following:

The property is found to be in an unacceptable condition due to tenant damage or neglect (however, in such a case, the tenant would be given the opportunity to make good any damage at their own expense and then have their application reconsidered).

There has been an anti-social behaviour order (ASBO) granted against the tenant or a member of their household, or the proposed assignee has a current ASBO against them or was previously evicted for antisocial behaviour.

- There are factors relating to the tenant or proposed assignee which, were they to make a direct application for housing, would give NGHA grounds to suspend them from receiving an offer under the terms of its allocations policy.

- The house was provided by NGHA in connection with the tenant's employment with NGHA.

- The property has significant adaptations or design features which are not required by the proposed assignee.

- The property is part of a scheme specifically designed for persons with specific needs, or designated for a particular client group, and the proposed assignee does not meet the criteria.

  If NGHA refuses permission, tenants can appeal using NGHA's complaints procedure, as well as having the right to apply directly to the Sheriff Court.

False information

If it is found that an application to assign a tenancy has been falsified, or that information has been deliberately misleading or withheld in order to influence the decision, NGHA may refuse or withdraw its permission or commence legal action with a view to recovering the tenancy, if applicable.

6.0 SUBLETTING

6.1 The tenant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home. If they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; the person who was the tenant at that time must have notified the landlord that the person who is now the tenant was living there. The 12-month period does not start until the landlord has been notified. An example of this could be where the tenant was not the tenant throughout the previous 12 months but has during this period succeeded to the tenancy and immediately wants to sublet it.

Applying for Consent to Sublet

Tenants wishing to sublet their property must first apply in writing to NGHA and provide all information required by NGHA to consider the request, including:

- Details of the proposed transaction including details of the subtenant, and any other persons who will be occupying the house.

- Details of any payment which has been or is to be received by the tenant in consideration of the transaction.

- The date the tenant wishes the transaction to take place.

- A copy of the proposed sublease between the tenant and subtenant.

Granting Permission to Sublet

In assessing whether permission can be granted, NGHA will require to be satisfied that certain conditions relating to the conduct of the tenancy and the suitability of the proposed subletting arrangement are met. These will be detailed in the accompanying procedure and will be made available to tenants applying to sublet.

The assessment of any application to sublet will include a consideration of whether the proposed charges are reasonable. The proposed rent to be charged to the subtenant will be deemed reasonable if it is the same as or less than the amount of rent paid by the tenant to NGHA, plus any reasonable extra charges to cover additional costs such as the provision of furniture, payment of insurance, energy bills etc. Any refundable security deposit should not be more than the value of one month's rent charge. No other charge may be made.

A tenant subletting their property must intend to return within a specified period of time to use it as their only or principal home.

If NGHA fails to comply with this timescale, the tenant is legally entitled to assume that consent has been granted.

Conditions of Subletting

Where NGHA agrees to give permission for a tenant to sublet, permission will be granted subject to certain reasonable conditions that will be made available to tenants applying to sublet.

- The tenant obtains NGHA's written permission prior to implementing any increase in the rent charged to the subtenant, which will only be granted if NGHA believes the increase to be reasonable.

- The principal tenant remains responsible for ensuring that the terms and conditions of the tenancy are met and will be responsible for the conduct of any subtenant during their sublet. Any legal action arising from breach

- If the property requires any repairs which, in NGHA's opinion, have been caused by the tenant, they are responsible for paying NGHA the cost of carrying them out.

- The subtenant must accept the property in its existing condition.

- If the tenant decides to bring the subletting arrangement to an end, they are responsible for legally ending the sublease arrangement and asking the tenant to leave, not NGHA.

- The conditions will include a requirement that at the end of the sublet, the tenant must return to live in the property and that if they do not return, they must end their tenancy and the sublease arrangement.

- The tenant is required to provide an address and phone number where they can be contacted during the sublet. In addition, the tenant can nominate someone else to act as a day-to-day contact in connection with the sublet.

- The Council Tax department must be notified of the subletting arrangement by the tenant. Also, if in receipt of Housing Benefit the tenant must notify the Housing Benefit department.

- The tenant must notify their insurance company about the subletting arrangement.

Any sublet will only be granted for an initial period of up to six months. Requests to renew the sublet will be considered at NGHA's discretion and may be granted for up to a further six months, depending on the individual circumstances. After the initial six-month period, a maximum of two extensions of up to six months will be permitted, up to a total maximum of 18 months. However, in line with its obligation towards meeting housing need, NGHA must continue to be satisfied that the principal tenant has every intention of returning to the property.

Withholding Consent to Sublet

NGHA will consider all written requests from tenants to sublet their property. Consent will only be withheld if there are reasonable grounds for doing so.

Reasonable grounds for refusing consent are as highlighted in Section 32 Subsection (3) of the Housing (Scotland) Act 2001 and any additional amendments.

If NGHA refuses permission, tenants can appeal using NGHA's complaints procedure, and also have the right to apply directly to the Sheriff Court.

False and Misleading Information

If it is found that an application to sublet a property has been falsified, or that information has been deliberately misleading or withheld to influence
the decision, NGHA may refuse or withdraw its permission, or commence legal action with a view to recovering the tenancy, if applicable.

7.0 JOINT TENANCIES

7.1 For all new tenancies NGHA will normally offer joint tenancies of those who are joint applicants, who are spouses, civil partners or co-habitee.

7.2 If a tenant requests that they wish to change their sole tenancy to a joint tenancy the proposed joint tenant must be 16 years or older, have lived at the property as their only principal home for the 12 months before the tenant applies for them to become a joint tenant. The 12-month qualifying period applies to everyone. Where works are planned, we will notify owners prior to works being carried out.

7.3 The tenant, joint tenant or proposed joint tenant must have notified NGHA that they person they wish to become a joint tenant with is living in the house.

7.4 The 12-month period does not start unless NGHA has been told that the person is living in the property as their only or principal home and NGHA has granted permission for them to live there.

7.5 Although this list is not exhaustive, some of the grounds under which an application may be refused are:

- NGHA has served a notice of proceedings for recovery of possession on the tenant, specifying one of the grounds 1 to 7 in Schedule 2 of the Act.

- An order for recovery of possession has been made against the tenant.

- NGHA intends to carry out work on the property which would affect the part of the house connected with the proposed transaction.

- A payment has been received by the tenant, in cash or in kind, in consideration of a joint tenancy request.

- The tenant has an outstanding debt to NGHA.

- Incomplete or false information has been given about the request.

- The prospective joint tenant has pursued a course of anti-social behaviour or had been convicted of using a previous tenancy for illegal or immoral purposes or has an Anti-Social Behaviour Order.

- The property in question has substantial adaptations or features or provides specialised housing support or care at home services not required by the joint tenant.

- NGHA would not grant a tenancy to the proposed joint tenant for reasons set out in the Allocations Policy.

The Association will notify the tenant in writing of its decision within 28 days of receiving their request to have a joint tenant (s). Where consent is refused, we will advise the applicant of the reason.

8.0 HOUSEHOLD CHANGES AND UNAUTHORISED OCCUPATION

8.1 There may be occasions where a person other than the tenant has sole occupation of the property and this has not been approved by us.

8.2 If the person has no right to stay in the home after the main tenancy has been ended, and if we do not intend to grant permission for the occupant to succeed or take over the tenancy through assignation, then the occupant will be a 'non-entitled occupant'.

8.3 Lawful sub-tenants, lodgers or a non-entitled spouse may have legal tenancy rights, and if there is any doubt advice must be sought from our solicitor.

8.4 If the person residing in the property has no right or title, then our solicitors will be instructed to issue notice to the occupant requiring them to vacate the property within seven days.

8.5 At the end of the seven-day notice period, if the non-entitled occupant has failed to remove from the property, the solicitors will be instructed to make an immediate application for a Court Order to remove the occupant(s).

8.6 Where the occupant had been granted permission to reside in the property as a sub-tenant or lodger by the main tenant without our authorisation then this will have been contrary to the terms and conditions of the tenancy and any remedy will be claimed against the tenant.

9.0 CUSTOMER INVOLVEMENT

9.1 We will promote our Tenancy Changes Policy though our factoring newsletter and website. Where we plan to make significant changes to the policy, we will consult tenants through short-life working groups, consultation events or our Tenant Panel in line with our Tenant Participation and Engagement Strategy.

9.2 You can find out more information about out tenant engagement work on our website and Tenant Participation Strategy.

10.0 LEGISLATIVE FRAMEWORK & POLICY CONTEXT

10.1 We are regulated by the Scottish Housing Regulator (SHR). Their Regulatory Framework sets out seven Standards of Governance and Financial Management.

10.2 Relevant to this Policy are the following elements under the Standards:

- **Standard 1**: The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

- **Standard 2**: The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.

- **Standard 3**: The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.

- **Standard 4**: The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

- **Standard 5**: The RSL conducts its affairs with honesty and integrity.

Scottish Social Housing Charter

The Charter sets out the standards and outcomes for all social landlords when performing their wide range of activities. The Association will comply with the following Scottish Social Housing Charter requirements most relevant to this policy:

- **Outcome 1**: Equalities - every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

- **Outcome 6**: Social landlords, working in partnership with other agencies, help to ensure as far as reasonably possible that tenants and other customers live in well-maintained neighbourhoods where they feel safe.

- **Outcome 7,8 & 9** – Housing Options – people at risk of losing their homes get advice about preventing homelessness.

- **Outcome 11** – Tenancy Sustainment – tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and other organisations.

11.0 KEY ASSOCIATION POLICIES

Complaints

Although we are committed to providing high levels of service, we accept that there may be occasions where a service user may not be satisfied with the service received from the Association. Any person looking to make a complaint can find out more about how to do so by following this link Complaint Handling Procedure.

Ethical Conduct

The Association is committed to the highest standards of ethical conduct and integrity in all its activities both our Management Committee and staff must adhere to our Code of Conduct, which can be found by following the links above.

Data Protection

We will comply with the provisions of the Data Protection Act 2018, which gives individuals the right to see and receive a copy of any personal information that is held about them by the Association and to have any inaccuracies corrected. You can find out more about how we manage personal data here.

Equality, Diversity and Inclusion

NGHA aims to promote equality and diversity and operate equal opportunities policies which inform all aspects of its business. To find out more please see the following link Equality Policy.

An Equalities Impact Assessment has been completed for this policy and can be provided upon request.

12.0 NGHA CONTACT DETAILS

NGHA will provide this policy, on request at no cost, in larger print, in Braille, in audio or in other non written format, and in a variety of languages. Please contact the office.

Address	200 Crown Street, Glasgow, G5 9AY
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