



Assignations Policy

Easy to read version

What is an assignation?

Assignation is the legal term used when a tenant passes on (assigns) their tenancy to another person, known as an assignee. There is no new tenancy, but the rights and responsibilities associated with the tenancy are passed on to the assignee.

Why would a person want to assign their tenancy?

There are many reasons why a person would want to pass on their tenancy. For example, they may leave to work abroad, or may feel that they no longer want to be responsible for the tenancy.

Are there any conditions for assigning a tenancy?

Yes. There is legislation which sets out the criteria for assigning a tenancy. This is contained within Section 32 and Schedule 5, Part 2 of the Housing (Scotland) Act 2001 and Section 12 of the Housing (Scotland) Act 2014. This provides every Scottish secure tenant and short Scottish secure tenant with the right to assign their tenancy as long as:

the tenant:	has lived in the house as their only or principal home for 12 months immediately before applying to assign the tenancy
	has the written consent of the landlord
the assignee:	is over 16 years of age
	has lived in the house as their only or principal home for 12 months or more prior to the application to assign the tenancy. The 12 month residency period will only start when the Council has been notified that the person is living in the property as their only or main home.

What is a principal home?

This means your main home – somewhere you have a major link to. It does not mean you must live there all of the time. If you spend periods of time away from the home, it may still be your only or main home. For example, if you are a student, your

parents' home may still be seen as your main home even if you are temporarily living away from it, as long as you plan to return there.

How do I apply to assign my tenancy?

To apply, you must first fill in an application form asking for our permission to assign your tenancy. You must give us all of the information that we ask for on the form. We may also need to interview you.

If you do not give us all of the information that we ask for, we will not be able to assess your application and may refuse your application.

How will you assess my application?

We will consider all of the information that you give in your application and we will also consider the housing need in the area that you live in.

From your application will confirm:

- how long you have lived in the house;
- how long the person you want to assign your tenancy has lived in the house and when you told us that they had started living there;
- the date that you want to assign your tenancy from;
- any payment that you might receive should we give you permission.

The person you want to assign your tenancy to must fill in a housing application form. We will assess this in line with our Allocations Policy to establish if they have a housing need. We will only give our permission if the person has a significant housing need in contrast with others on the Housing List. Where the applicant is deemed not to be in housing need, the application may be refused.

We will also consider:

- the demand for housing in the letting area of the tenancy;
- the suitability of the property; and
- whether the assignation will lead to the property being under occupied or overcrowded.

If you have a joint tenancy, you must get agreement from the other joint tenants to pass on the tenancy. If you have a husband, wife or civil partner, you must get their agreement to pass on your tenancy.

When we have all of the information we need, we will give you our decision in writing within one month of getting your application.

We will not refuse permission without a good reason. If we don't respond to you within one month, this means we have given our permission for you to pass on your tenancy.

When will you give your consent to assign a tenancy?

Unless we have a good reason to refuse permission to assign a tenancy, we will generally give our consent when:

- the proposed assignee's housing application, once assessed in line with the Allocations Policy, demonstrates that the proposed assignee is in housing need; and
- that by assigning the tenancy, we will be alleviating housing need and demand in the area.

What happens if you give your consent to assign a tenancy?

When we give permission to assign the tenancy, the tenancy does not end and a new tenancy does not begin. The tenancy continues. No new tenancy agreement is required. It is the tenant who changes.

We will ask the assignee to attend a meeting to discuss the content of the tenancy agreement and make them aware of their rights and responsibilities in relation to the tenancy. They will take on all the rights and responsibilities associated with the tenancy, including any outstanding housing debt. The former tenant will no longer be liable for any outstanding housing debt and will not be chased for debt recovery.

The tenant must advise other relevant authorities and services providers of the assignation arrangements.

When will you refuse permission to assign a tenancy?

In line with housing law, we cannot unreasonably withhold our consent to assign a tenancy. If we refuse to give permission we will tell you why, what action you can take to address this and how you can appeal against our decision.

We will only refuse permission to pass on your tenancy if we have good reasons for refusing. Housing law includes the following as reasons for refusal:

- where the person you want to assign your tenancy to would not receive reasonable preference under the terms of our Allocations Policy;
- where we believe that the change in the household will result in the property being under occupied (in line with our Allocations Policy);
- where a notice of proceedings for possession has been served on the tenant which specifies any of the 'conduct' grounds for eviction set out in the Housing (Scotland) Act 2001;
- an order for recovery of possession has been made against the tenant;
- it appears that the tenant is to receive a payment for the assignation which is other than reasonable;
- where the assignation would lead to overcrowding as defined by the section 139 of Housing (Scotland) Act 1987; or
- we propose to carry out work on the house or building which would affect the accommodation in question.

The above grounds for refusal are not exhaustive. There is no definitive list of grounds for refusal and each case will be assessed on its own merits. Other reasons include:

- whether or not the transaction is for unreasonable financial gain;
- where the tenant has housing related debt and there is a risk that this will not be repaid to the Council;
- where the house was designed or adapted for persons with special needs and if the assignation were allowed, there would be no person living in the house who required those designs or adaptation;
- where the proposed assignee has pursued a course of antisocial conduct, or has been convicted of using a previous tenancy for illegal or immoral

purposes. Or has had an interim or full ASBO granted against them or a member of their household within the last three years;

- where the proposed assignee does not require accommodation of the type, size or standard that is proposed to be assigned;
- whether the assignation is deliberately intended to circumvent the Allocations Policy. The Council will complete an assessment of the assignee's housing need. Where the applicant is deemed not to be in housing need, the application may be refused; or
- if we don't have all of the information that we need to make our decision within one month. If this happens, you can apply again once we have all of the information.

What if I don't agree with your decision?

If you are not satisfied with the decision, you can appeal in writing to the Housing Services Manager who will review the original decision. They will notify you of their decision within 4 weeks of receiving the appeal request.

You also have the right to raise legal proceedings by way of summary application. The court must order us to agree to the application unless it thinks that our refusal to give permission is fair. If you want to challenge our decision by starting court action, we recommend that you get independent legal advice.

When will the Assignations Policy be reviewed?

The Assignations Policy will be reviewed in 2022, unless an earlier review is required due to legislative changes.