

# CALEDONIA HOUSING ASSOCIATION

## POLICY ON ASSIGNATIONS, SUBLETTING & LODGERS

POLICY IMPLEMENTATION CHECKLIST	
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Author:	Operations Director
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## **CALEDONIA HOUSING ASSOCIATION LIMITED**

### **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, to sub-let their property or to take in a lodger.
- 1.2 The Act requires that 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 within a reasonable timescale.
- 1.3 The Act lists some reasons which could be considered legitimate reasons for refusing such requests. The list is not exhaustive and landlords may use other reasons, provided they consider these to be reasonable.
- 1.4 In the event of a 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 assignment, 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 The Assignment of a tenancy occurs when a tenant elects to transfer the rights of their tenancy to a third party. This section highlights the eligibility criteria for assignment as not all rights transfer and not all applicants will be eligible.
- 2.2 In effect, any Scottish Secure Tenant has a right to assign their tenancy to an individual or group who has been resident in their home. However to do so the tenant must have written consent from the Association and the applicant ("assignee") must be able to prove that the property has been their only or

principal home for a period of not less than six months prior to the date of application.

2.3 If the tenant wishing to assign their tenancy has a **Preserved Right To Buy**, this will **NOT** be transferred to the assignee.

2.4 The Association has detailed procedures which outline the process for consideration of an application to assign and these outline reasonable grounds for refusing an application. These will include but will not be limited to the statutory grounds mentioned previously and the following:

- Caledonia 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, Caledonia will normally agree to the assignation. Caledonia 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 permission to assign a tenancy is granted it is the policy of Caledonia to arrange for the prospective assignee to sign a new Scottish secure tenancy agreement as this avoids any ambiguity over the status of assignees.
- Caledonia is aware that it may not enforce this requirement and an indication that the assignee does not wish to do this will not normally lead to Caledonia refusing the assignation.
- In line with case law Caledonia will 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. Caledonia will decline an application to assign if this results in the property being overcrowded or under occupied.
- Caledonia 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 Any Scottish Secure Tenant who can demonstrate good cause for having to be away from their home, such as for work or family commitments, has the right to sub-let their tenancy in accordance with the legislation and this Policy. The tenant must provide satisfactory evidence that the move away is temporary, that they intend to return and that the property will remain their principal home.

- 3.2 The Association will treat applications where the tenant is requesting permission to let part of the property as an application to take in a lodger. The difference between lodging and sub-letting from the Association's perspective is that sub-lets involve the tenant moving away from the tenancy for a period of time; whereas a lodger will rent part of the tenancy and the tenant will remain resident in the tenancy with the lodger.
- 3.3 Tenants wishing to sub-let their property or take in a lodger must make a written request, a form is available to assist in this and must be used. The application must state the duration, the charges and tenancy details of the proposed sub tenancy or lodging arrangement. Some Local Authorities require all private lettings arrangements to be registered. Where this applies confirmation of registration must be included with an application.
- 3.4 As with Assignations, Caledonia has detailed procedures which outline the process for consideration of an application to sub-let or take in a lodger and these outline reasonable grounds for refusing an application. These will include but will not be limited to the statutory grounds mentioned previously and the following:
- Caledonia 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.
  - Caledonia will also consider the size of accommodation and the proposed household composition to ensure we make best use of stock when considering requests to sub-let or take in lodgers. Caledonia will refuse the request to sub-let or take in a lodger if this results in the property being overcrowded or under occupied.
- 3.5 Caledonia will not normally give permission to allow the tenant to sublet or take in a lodger for more than 6 months before being reviewed.
- 3.6 The permission to sub-let or take in a lodger will not confer any rights to the tenancy, which would remain subject to separate application and consideration.
- 3.7 The secure tenancy and the requirements and responsibilities of the tenancy agreement will remain with the tenant for the period of the sub-let or lodging.

#### **4.0 Refusal and Appeals**

- 4.1 If a tenant is unhappy with the decision made on the request to sub-let or take in a lodger they can appeal in writing to the Housing Manager within 28 days of receiving the decision. The Housing Manager will review the decision and may reverse any aspect which is felt to be unfair or contrary to this policy.
- 4.2 If the decision remains the same, the tenant will be given written reasons for this. If the applicant is still dissatisfied they may revert to Caledonia's formal complaints procedure, which is available at any of our offices. This does not

prejudice the tenant's 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 Caledonia 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.
- 5.2 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.
- 5.3 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.
- 5.4 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), Caledonia is not bound by but aims to meet the spirit of the legislation.

## **7.0 Review**

- 7.1 This policy will be reviewed 3 years from the date of implementation, which will be the date the policy is approved by the Board of Management or earlier if deemed appropriate.