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RELATIONSHIP BREAKDOWN PROCEDURE

PLACES FOR PEOPLE SCOTLAND

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Introduction

Procedure will outline our involvement and legal rights for our customers where a relationship has broken down. Where there is reported or known violence or abuse, please refer to Domestic Abuse procedure.

Housing rights of an individual depend on if the individual is a tenant, whether this is a sole or a joint tenancy and whether the individual has obtained occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

As a landlord, we will not become directly involved and need to remain impartial. Housing Officers should provide practical advice and assistance to both parties when requested. You should encourage that both parties seek legal advice and if required request a court ruling if either party cannot agree who should have the tenancy. It is the customers’ responsibility to decide who (if any) persons remain in the property.

All housing options are detailed in our Allocations Policy. We are not obliged to re-house anyone in the event of a relationship breakdown and they should apply for housing through their Local Authority; EdIndex, Homesearch and other agencies. If children are involved then the partner keeping their children will usually be expected to remain in the family home.

Legislation

Matrimonial homes (family protection) (Scotland) Act 1981

General Data Protection Regulation

Confidentiality

Any information will be treated as strictly confidential in accordance with the Confidentiality Policy. Information will only be shared within the association, predominately Housing Management, by those who need to know. Information will not be shared with the external agencies without the prior consent of the individual. The only exception to this will be where a person’s safety or well-being is considered to be at risk (Refer to Safeguarding Vulnerable Adults). It is important that confidentiality is respected.

Staff must obtain consent from the individuals before sharing information with external agencies.

SOLE TENANCY

Tenant Remains in Property:

If it is agreed that the non-tenant partner is going to move out of the property, a new household composition needs to be completed. No further action is required; a home visit should be offered alternatively the household composition can be sent via the post. This is regardless if the tenant and non-tenant are married in a civil partnership or were partners.

Internal Reporting Requirements (IRR): The Housing Officer must complete a new household composition and update Northgate by entering the leaving date of the non-tenant. Any home or office visit must be logged on Customer Contacts on Northgate.

Sole Tenant Decides to Move:

If the sole tenant requests the tenancy to be signed over to the non-tenant; this would be classed as an assignation request. Please refer to and follow the Assignation procedure [HM PRO - Assignation.docx](HM%20PRO%20-%20Assignation.docx). If the assignation is approved the non-tenant will become the tenant. This is regardless of the tenant and the non-tenant being married, in a civil partnership or partners. If the proposed assignee does not meet the Assignation criteria the tenancy will be brought to an end, refer to End of Tenancy Procedure [HM PRO - End of Tenancy.docx](HM%20PRO%20-%20End%20of%20Tenancy.docx) to complete action.

Once the tenancy has been assigned over, the former tenant has the option to bid for housing again and they will be assessed in accordance with our Allocations Policy. They will be unable to apply for a transfer and we have no legal obligation to re-house them. You should make this clear when giving housing advice.

IRR - The Housing Officer must inform the customer that this process is known as an Assignation and what the process is. Follow the Assignation Procedure and complete within 28 days.

Where the sole tenant has abandoned due to relationship breakdown:

If the non-tenant contacts us to advise that the sole tenant has abandoned their tenancy and the non-tenant is living in the property, the Housing Officer should serve 1st Abandonment Notice on the property. This allows the tenant 28 days to get back in contact with us. If no contact is received by the tenant then their tenancy will be brought to an end on the 29th day or next working day. Please follow the Abandonment Procedure [HM PRO - Abandonment.docx](HM%20PRO%20-%20Abandonment.docx).

Housing Officers need to gather as much information about the non-tenant living in the property using the occupant interview sheet (Part of the Abandonment procedure). Once this has been completed the Housing Officer needs to check Northgate and Objective to check if the non-tenant is registered as living there. If the non-tenant has been living there for less than 12 months, has a tenancy elsewhere, cannot prove they have occupied the property as their principle home the non-tenant will not be offered the tenancy and housing advice should be given and a date that they must vacate the property by. This must be confirmed in writing and saved on our tenancy file. This will be classed as an illegal occupant.

Non tenant partners who are married or in a civil partnership have occupancy rights to the property and are known as the ‘non entitled spouse/partner’. The ‘non entitled spouse or partner’ will have a right to remain in the property. The Abandonment procedure should be followed and the occupant interview sheet should be completed. Please refer to the Occupancy Rights Section for full details and speak with a Housing Management Team Leader before proceeding.

JOINT TENANCY

There are three ways in which a joint tenancy can be altered to a sole tenancy after a relationship breakdown: one tenant terminates their half of the tenancy, assign their half of their tenancy to one individual or abandonment of a joint tenancy.

A Joint Tenant Terminates Their Half of the Tenancy:

Once the joint tenants have agreed who is remaining in the property. The Joint tenants are required to advise us in writing and give 28 days’ notice. During the notice period both joint tenants are responsible for any arrears or action to be taken against them.

Housing officers need to get Joint Tenants to complete a termination form and update Northgate removing a joint tenant on the 29th day or next working day.

Assigning Joint Tenancy to Sole Tenancy:

Only to be used in exceptional circumstances. This should only be used if a joint tenant needs this to be completed within 28 days. Please note that the assignation process can take up to 28 days. Both tenants must agree to this.

Housing officers must complete this action by following the Assignation Procedure.

Joint Tenant Abandons the Property:

If the Housing Officer is advised that one of the joint tenants has abandoned and the remaining tenant does not know the location of the individual, Housing Officers must follow the abandonment procedure and serve the appropriate Notices.

Both wish to move:

If neither tenants wishes to remain in the property they must end their tenancy by giving us 28 days’ notice in writing. We must have both tenants signature.

Housing Officers need to ensure that a Termination Form is completed and signed by both tenants and follow the End of Tenancy Procedure to ensure the tenancy is correctly ended.

NO AGREEMENT

If no agreement can be reached between the ex-partners and reconciliation is not an option, we cannot become involved. Both parties must seek legal advice and apply to the courts to decide who should be awarded the tenancy. There are differences depending if the individual are married, in a civil partnership or cohabitees.

Married and Civil Partnership:

If both individuals are joint tenants, a court order needs to be obtained to decide who will remain in the tenancy. Until the decision is made both names will remain on the tenancy, both parties have rights and responsibilities to the tenancy including paying rent and any repayment of rent arrears. This applies even if one individual has moved out.

If it is a sole tenancy and the tenant wants their ex-partner (household member) to leave, we cannot take any action under the matrimonial rights. If married/civil partnership they automatically have occupancy rights. A court order needs to be obtained to decide who will remain in the property. The decision from the court will advise who will be awarded the tenancy.

Cohabitees:

If both individuals are joint tenants, a court order needs to be obtained to decide who will remain in the tenancy. Until the decision is made both names will remain on the tenancy, both parties have rights and responsibilities to the tenancy including paying rent and any repayment of rent arrears. This applies even if one individual has moved out.

Non-tenant partner can apply to the court to be granted occupancy rights. Occupancy rights will only be granted for 6 months at a time. Occupancy rights give the non-tenant the right to live in the property but do not give them the right to the tenancy. If occupancy rights are awarded, the sole tenant will remain as the sole tenant on the tenancy agreement and have the right and responsibilities to the tenancy including paying rent and any rent arrears. The sole tenancy will remain until the sole tenant requests to assign the tenancy.

INFORMATION AND GUIDANCE

Who should remain in the family home:

This is the responsibility of the customers to decide; we cannot take sides or influence any decision. We have to remain impartial and offer advice when it has been requested. Staying in the family home is based on a number of factors:

* Whether they are married or not?
* Whether there are children involved?
* Is the property used for business purposes?
* Whether they can afford to remain in the property? We can offer FIT assistance
* The persons named on tenancy does not necessarily have to be the one to remain in the property

Advantages:

* You don’t have to go through the upheaval of moving
* You won’t have to move away from work, school, friends, family

Disadvantages:

* Property is too large or too expensive to run on your own
* If your partner has been violent or abusive to you, this may not be safe, as they know where you live
* It might be harder to start a fresh if you are still living in the home you live in