



Ending of a Joint Tenancy

If you require this policy in a different format please ask a member of staff

Approved
December 2010

Review Due
December 2013

Joint Tenancies Procedures

Policy Statement

Elderpark Housing Association will ensure that joint tenancy applications are processed in accordance with legal provisions, contractual terms contained within the tenancy agreement and best practice guidelines. The Association will also ensure the promotion of equal opportunities by publishing joint tenancy information and documentation in different formats/languages as required. It is Association policy to offer applicants the choice of whether the tenancy should be sole or joint.

Joint Tenancies: Legal Provisions

Legal provisions exist that govern the right to a joint tenancy. (Housing (Scotland) Act 2001, Section 11 (5)) In order to fulfil these legal obligations, it is necessary to implement detailed procedures to offer tenants the form of tenancy most appropriate to their particular needs and preferences. It should also be noted that, although the term “joint tenant” is used throughout, legally joint tenants are actually tenants in common.

Request for a Joint Tenancy

Scottish secure tenants have the right to apply for a joint tenancy with one or more individuals who either live (or intend to live) in the house as their only or principal home. This request must be in writing. On request from a tenant to create a joint tenancy, the tenant should be sent (Document 1) to lodge their written request, along with the covering letter Document 1(a). On receipt of this letter, both the tenant and the proposed joint tenant should be interviewed, either in the office or in the tenant’s home. Staff should complete the standard checklist to ascertain whether there are grounds for refusing the application. (Document 1 (b)) The Association can only refuse a request for a joint tenancy where it has reasonable grounds for refusal. Possible grounds for refusal are covered below.

Principal Home

Although principal home is not defined in the Act, a house will be considered to be a person’s principal home where s/he has a substantial connection to it. Further, even when someone is temporarily absent from the property, a house will be deemed to be the principal home if a person intends to return and can display some sign of that intention, for example, the presence of belongings or someone else staying there on the person’s behalf. (*Roxburgh D.C. v Collins*, 1991 S.C.L.R. 575; *Amoah v Barking and Dagenham LBC*, unreported 23 January, 2001)

The issue concerning whether or not a house is a person’s principal home is a question of fact and each case requires to be assessed on its merits. Types of factors to take into account are as follows:

- Information held on the tenancy file
- information about another tenancy, for example, information provided by other landlords
- Information from official sources such as employer or medical records
- Information from other agencies/departments such as Social Work or Social Security
- Information from neighbours, relatives etc.

It is emphasised that disclosure of information either by the Association or other organisations should conform to requirements of the Data Protection Act 1998.

Termination of Joint Tenancies

Former secure tenants required the consent of other joint tenants and their landlord to end the secure tenancy. This meant, therefore, that people were often “trapped” in unwelcome situations, for example, one tenant facing escalating rent arrears because of a partner joint tenant’s unwillingness to pay the rent. The Housing (Scotland) Act 2001, however, addresses this situation as it entitles any existing joint Scottish secure tenant to end her/his tenancy interest provided the tenant gives both the Association and any other joint tenant 4 weeks written notice. (Documents 4 (a), 4 (b) and 4 (c)) In the case of joint tenants this notice must be given to each/all of the joint tenants. It is emphasised that this does not end the tenancy. Despite this legal change, however, staff will require to seek the consent of entitled spouses before they accept termination of tenancy.

Occupancy Rights

Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 the non-tenant spouse, that is, the tenant’s wife or husband, has the right to occupy the matrimonial home. (See below). This statutory right to occupy the matrimonial home can only be ended in a number of ways:

- End of marriage, for example, by death or divorce.
- Where tenant loses tenancy rights, for example, through eviction.
- The matrimonial home ceases to exist, for example, sale of the house.
- The rights are renounced in writing by an oath sworn before a notary public.

The Matrimonial Home

It is not always easy to define matrimonial home and resort to the court may be required to grant a declarator, that is, a court order that is a declaration by the court of a person’s rights. This order does not, however, enforce a person’s rights. The usual matrimonial home, however, is the house in which a married couple and their children, if any, live. It does not include gay or lesbian couples. It is not essential that either spouse actually live in the house, for example, a couple may buy a house as a retirement home and let it out temporarily until they occupy it. Also, there may be more than one

matrimonial home, for instance, a couple may own a caravan or cottage that have been acquired for family residence, although they may only be used occasionally.

Termination of Joint Tenancies and Housing Debt

Where one of the joint tenants ends her/his interest in the tenancy by service of notice, the Housing Officer should pursue both parties housing debt as per Arrears Policy guidelines.

Therefore, if one half of the joint tenancy has given you, the landlord, and the other joint tenant 28 days notice you must accept it. However you will still pursue both of them for the debt up to the end of the joint tenancy.

Joint Tenancies and the Right to Buy

Where a joint tenancy exists, Circular 5/2002 clarifies that not all of the joint tenants need to exercise their right to buy along with the tenant who so chooses. In these cases, the consent of the joint tenant not wanting to buy must be obtained in writing. This will be required when the tenant completes the formal right to buy application form at the time notice of intention to buy is served on the Association.

In addition, the formal written consent of the tenant's spouse will be required when she/he occupies the house as her/his only or principal home, irrespective of whether the spouse is/is not a tenant. (Housing (Scotland) Act 1987, section 61 (5)). As noted above, this is required to prevent a dealing under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, section 6).

Joint Tenancies and Abandonment by any Joint Tenant(s)

Where the landlord under a Scottish secure tenancy has reasonable grounds for believing that a joint tenant is not occupying the house and does not intend to occupy it as her/his home, separate procedures apply should the landlord wish to end the tenancy. (See below).

Abandonment Notices

A landlord wishing to end the interest of an abandoning tenant in the tenancy must serve an abandonment notice on that tenant. (Abandonment Procedures Document 1). A copy of this notice must also be served on any other joint tenant. This notice can be served in any of the three ways described in the abandonment procedures. This notice must:

- State that the landlord has reason to believe that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home
- Require the abandoning tenant to inform the landlord in writing within 4 weeks of service of the notice if s/he intends to occupy the house as their home
- Inform the abandoning tenant that, if it appears to the landlord at the end of the 4 week period that the tenant doesn't intend to occupy the house, the abandoning tenant's interest in the tenancy will be ended by service of an appropriate notice.

As with houses abandoned and unoccupied, the Housing Officer must carry out whatever inquiries are required to be satisfied that the abandoning tenant is not occupying the house and doesn't intend to return. Although the information provided by other joint tenants will be relevant, such information will often not be sufficient. Again, information received from other tenants will require to be assessed in the light of general circumstances, for instance, the possibility of relationship breakdown.

Termination of Tenancy

The abandoning tenant's interest in the tenancy can be ended by the landlord serving a second notice on the abandoning tenant. (Abandonment Procedures Document 9). The date for ending the tenancy must be specified in this second notice. This date must be at least 8 weeks from the date the first notice was served.

Joint Tenancies and Succession to Tenancy

When a Scottish secure tenant dies, the spouse or joint tenant will succeed automatically to the tenancy provided it is their only or principal home at the date of the tenant's death. See above for clarification of principal home and dealing with possible disputes. The standard application form should be completed by the relevant successor(s).

The succession should be acknowledged and a copy of the tenancy agreement should be given to the successor in the case of non-tenant spouses. The Housing Officer should explain the tenant's rights and obligations fully as per tenancy agreement signing procedures. This should include information concerning the tenancy such as the right-to-buy and its implications for tenants, the Association's complaints system and other policy information generally provided to tenants.

Rent is payable by the successor from the date of succession. Tenancy details should be referred to the finance section to note the administrative changes. It is emphasised that it is not a new tenancy.

Monitoring

In order to comply with its service commitments, it is important that the Association should monitor the effects of joint tenancy procedures. Areas to be monitored include complaints and appeals.

Review

This Policy will be reviewed every three years, the next review being due in December 2013. An interim review may take place in the event of changes to good practice, regulatory or legal requirements

Document 4 (a): Covering Letter to accompany Termination Notices 4 (b) and 4(c)

Address

Date

Dear (Tenant's name)

Re: Termination of Joint Tenancy at (property address)

I write to confirm that you may legally end your interest in your joint tenancy at. In order to do this, you must give 4 weeks' notice in writing to both the Association and any other joint tenant.

If you wish to end your joint tenancy, please sign and date the attached notices. One of these notices should be returned to me (Notice 4(b)); the other notice should be passed to any other joint tenant (Notice 4 (c)) with the duplicate copy returned to me.

Kindly confirm if you are married as your spouse's formal written consent will be required.

Yours sincerely

Housing Officer

Document 4 (b): Tenant's Notice of Termination to Landlord

Address

Date

Dear (Housing Officer),

Re: Termination of Interest in Joint Tenancy at (property address)

I am writing to give you notice of my intention to terminate my interest in the joint tenancy at (property address) in accordance with the Housing (Scotland) Act 2001, section 13. My interest in the tenancy will be ended 4 weeks from the date specified below.

I also confirm that I have served a 4 week notice of my intention to end my interest in the tenancy on (name of joint tenant). A copy of this notice is enclosed.

Yours sincerely

Signature of tenant

Date.

**Document4 (c): Tenant's Notice of Termination to Joint Tenant
(In duplicate)**

Address

Date

Dear (Name of joint tenant),

Re: Termination of Interest in Joint Tenancy at (property address)

I am writing to give you notice of my intention to terminate my interest in the joint tenancy at (property address) in accordance with the Housing (Scotland) Act 2001, section 13. My interest in the tenancy will be ended 4 weeks from the date specified below.

I also confirm that I have served a 4 week notice of my intention to end my interest in the tenancy on Elderpark Housing Association.

Yours sincerely

Signature of tenant

Date