



Ending a Joint Tenancy

If you have difficulty with reading this policy, including any difficulties with sight or hearing, or if you require this document translated into another language, please contact us and we will be happy to provide this information in a format that suits your needs.

Our Vision, Our Mission, Our Values

Our Vision

Elderpark Housing will lead the way in delivering outstanding customer services and great places to live.

Our Mission

To provide quality, affordable homes and excellent services which place a focus on our customers and enhancing our communities.

Our Values



Equality and Diversity Statement

Elderpark Housing are committed to ensuring people or communities do not face discrimination or social exclusion due to any of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex or sexual orientation.

This document complies with our Equality and Diversity Policy.

We will regularly review this Policy and consider any equalities implications taking the necessary action to address any inequalities (either directly or indirectly) that result from the implementation of this Policy.

Executive Summary

Policy Author

The Housing Manager has developed this policy on behalf of the organisation. It applies to all instances of ending a joint tenancy.

Purpose of the Policy

The Ending a Joint Tenancy Policy aims to ensure that we have an accountable process to identify, record and put in place procedures to deal with ending a joint tenancy, in accordance with legal provisions and contractual terms contained within the tenancy agreement.

Aims and Objectives of the Policy

The keys aims and objectives of this policy are:

- To give clear guidance on the process for dealing with ending a joint tenancy
- To ensure that all requests to end a joint tenancy are dealt with in line with and in accordance with legal provisions and contractual terms contained within the tenancy agreement
- To ensure that any requests are dealt with in accordance with our equality and diversity policy
- To advise customers of the complaints process

Legislative and Regulatory Compliance

We will seek to meet all of our legal obligations as set out in the following legislation:

- The Housing (Scotland) Act 2001
- The Housing (Scotland) Act 2014
- The Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Equality Act 2010

In addition, we will meet the outcomes and standards contained within the Scottish Housing Regulator's Regulatory Framework.

- **Outcome 1: Equalities** – *'Social landlords perform all aspects of their housing services so that 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 2: Communication** – *'Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and*

get the information they need about their landlord, how and why it makes decisions and the services it provides’.

- **Regulatory Standard 2** – *‘The landlord 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. In addition, its primary focus is the sustainable achievement of these priorities’.*
- **Regulatory Standard 5** – *‘The RSL conducts its affairs with honesty and integrity.’*

Equalities

We will ensure there is a consistent approach in promoting equality and diversity across all areas and this policy will be administered in accordance with this policy.

Privacy

This document fully complies with General Data Protection Regulations (2018) and once approved will be published on our website to ensure transparency of how we will seek to ensure Equality and Diversity across everything we do.

Related Policies

Policy Title	Location
Allocations Policy	V:\Elderpark Policy Suite\Housing Management Policies\H2 Allocations Policy.pdf
Equality and Diversity Policy	V:\Elderpark Policy Suite\Governance Policies\G13 Equality and Diversity Policy.pdf
Succession Policy	V:\Elderpark Policy Suite\Housing Management Policies\H17 Succession Policy.pdf
Abandonment Policy	V:\Elderpark Policy Suite\Housing Management Policies\H1 Abandonment Policy.pdf
Joint Tenancy Policy	V:\Elderpark Policy Suite\Housing Management Policies\H12 Joint Tenancy Policy.pdf
Complaints Handling Policy	V:\Elderpark Policy Suite\Governance Policies\G9 Complaints Handling Policy and Procedure.pdf

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1 Introduction

- 1.1 Elderpark Housing Association is a registered social landlord, established in 1975. We have strived to improve the lives of our residents, create opportunities and build a safe and secure environment. The Association is a 'not for profit' organisation, registered and regulated by the Scottish Housing Regulator and is governed by a voluntary Management Committee of up to 15 people who employ a team of staff to manage the Association on a day-to-day basis.
- 1.2 The Management Committee is responsible for approving this Policy, and for overseeing its implementation. The Chief Executive and Management Team have operational responsibility for policy implementation, and for reporting to the Management Committee on areas relevant to ending a joint tenancy requests.

2 Purpose of Policy

- 2.1 The ending a joint tenancy policy aims to ensure that we have an accountable process to identify, record and put in place procedures to deal with a occasions where a joint tenancy ends, in accordance with legal provisions and contractual terms contained within the tenancy agreement.
- 2.2 This policy is written in accordance with our Equality and Diversity Policy to ensure that tenants and residents in our community do not face discrimination, victimisation, harassment or social exclusion due to any of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex or sexual orientation.

3 Aims and Objectives

- 3.1 This policy is a key document within the Association. Its underlying objectives are:
 - To give clear guidance on the process for dealing with ending a joint tenancy
 - To ensure that all requests to end a joint tenancy are dealt with in line with and in accordance with legal provisions and contractual terms contained within the tenancy agreement
 - To ensure that any requests to end a joint tenancy are dealt with in accordance with our equality and diversity policy
 - To advise customers of the complaints process

4 Legal and Regulatory Framework

- 4.1 Legal provisions exist within the Housing (Scotland) Act 2001 that give joint tenants the right to end their tenancy provided they give us and any other joint tenant 4 weeks written notice.

4.2 We will seek to meet all of our legal obligations as set out in the following legislation:

- The Housing (Scotland) Act 2001
- The Housing (Scotland) Act 2014
- The Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Equality Act 2010

4.3 In addition, we will meet the outcomes and standards contained within the Scottish Housing Regulator's Regulatory Framework.

- **Outcome 1: Equalities** – *'Social landlords perform all aspects of their housing services so that 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 2: Communication** – *'Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides'.*
- **Regulatory Standard 2** – *'The landlord 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. In addition, its primary focus is the sustainable achievement of these priorities'.*
- **Regulatory Standard 5** – *'The RSL conducts its affairs with honesty and integrity.'*

5 Ending a Joint Tenancy

5.1 Where someone is a joint tenant, they can end their interest in the tenancy by providing 4 weeks written notice to us and any other joint tenant. Staff will require to seek the consent of entitled spouses before they accept termination of tenancy.

6 Termination of Joint Tenancies and Housing Debt

6.1 Where one of the joint tenants ends their interest in the tenancy by service of notice, we will pursue both parties for housing debt up until the end of the joint tenancy.

7 The Matrimonial Home and Occupancy Rights

7.1 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 rights are renounced in writing by an oath sworn before a notary public.

8 Abandonment by a Joint Tenant

- 8.1 Where we have reasonable grounds for believing that a joint tenant is not occupying the house and does not intend to occupy it as their only or principal home, the property can be recovered under sections 20 and 21 of the Housing (Scotland) Act 2001. Before we can end the interest of an abandoning tenant, we must serve an abandonment notice on that tenant. A copy of this notice must also be served on any other joint tenant.
- 8.2 There are two separate notices that we will serve before the tenancy can be ended and the house recovered. The notice to terminate the Scottish Secure Tenancy and the termination of the Scottish Secure Tenancy. The first abandonment notice (notice to terminate the Scottish Secure Tenancy) will:
- State that we have reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as their home
 - Require the tenant to inform us in writing within 4 weeks of service of the notice if they intend to occupy the house as their home
 - Inform the tenant that, if it appears to us at the end of the 4 weeks that the tenant does not intend to occupy the house a second notice will be served 8 weeks after delivery of the first notice. At the end of this 8 week period their interest in the joint tenancy will end.
- 8.3 Any joint tenant aggrieved by termination of their interest in the tenancy under section 20 of the Housing (Scotland) Act 2001 has the legal right to appeal to the Sheriff Court under section 21, within 8 weeks from the date the tenancy ended.

9 Termination of Tenancy

- 9.1 The tenancy is ended after service of the second notice (*termination of the Scottish Secure Tenancy notice*), provided:
- A proper first abandonment notice has been served on the other joint tenants; and
 - We have made such enquiries to be satisfied that the house is unoccupied and that the tenant does not intend to occupy it as their home.
- 9.2 The full process for abandonment by a joint tenant is contained within our Abandonment policy and procedures.

10 Joint Tenancies and Succession to Tenancy

- 10.1 When a Scottish Secure Tenant dies, the spouse or joint tenant will automatically succeed to the tenancy provided it is their only or principal home at the date of the

tenant's death and the relevant qualifying criteria has been met. Details of applying for succession are contained within our Succession Policy and Procedure.

- 10.2 In cases of succession, we will acknowledge it and provide the successor with a copy of the tenancy agreement. In the case of non-tenant spouses we will explain the tenant's rights and obligations fully as per tenancy agreement signing procedures. They will also be advised of our complaints procedure.
- 10.3 Rent is payable by the successor from the date of succession. While rent is payable from the date of succession it is not a new tenancy. In the case of a joint tenancy becoming a sole tenancy, the sole tenant remains responsible for the debt and all tenancy breaches.

11 Succession of a Joint Tenancy and Fair/Secure Rents

- 11.1 A secure rent will continue from the date of succession where the successor is a level one successor, a spouse, partner, civil partner or joint tenant.
- 11.2 If the successor is not a level one successor the secure rent will be ended from the date of death.

12 Implementation of the Policy

- 12.1 This policy will be implemented in line with our ending a joint tenancy procedures. Staff will be fully conversant and trained to carry out all aspects of the policy and procedures in a fair and equal manner.

13 Monitoring of the Policy

- 13.1 In order to comply with our service commitments, we will monitor aspects of joint tenancies, for example, complaints.

14 Complaints

- 14.1 Any complaints will be dealt with in line with our Complaints Handling Policy and Procedure. We monitor the effectiveness and efficiency of current practice by recording the following:
- The number of complaints received
 - The types of complaints
 - The outcome of complaints
 - Satisfaction levels through CX Feedback

15 Review

- 15.1 This policy will be reviewed every three years or as required by any changes to legislation or good practice.

Appendix 1 Equality Impact Assessment

Name of Policy to be assessed	Ending a Joint Tenancy	New policy or revision of existing?	Revision of existing policy
Person(s) responsible for assessment			
Briefly describe the aims, objectives and purpose of the policy.	The aims, objectives and purpose of the policy are to: <ul style="list-style-type: none"> • To give clear guidance on the process for dealing with ending a joint tenancy • To ensure that all requests to end a joint tenancy are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy • To advise customers of the complaints process 		
Who is intended to benefit from the policy? (e.g. applicants, tenants, staff, contractors)	Tenants will benefit from the policy		
What outcomes are wanted from this policy? (e.g. the measurable changes or benefits to members/ tenants / staff)	The outcomes wanted from this policy are: <ul style="list-style-type: none"> • To give clear guidance to staff and tenants on the process for dealing instances of ending a joint tenancy • To ensure that all requests to end a joint tenancy are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy 		
Which groups could be affected by the policy? (note all that apply)			
Age		Disability	
Gender reassignment		Marriage and Civil Partnership	
Pregnancy and Maternity		Race	
Religion or Belief		Sex	
Sexual Orientation			
If the policy is not relevant to any of the equality groups listed above, state why and end the process here.			
The policy pertains to everyone and does not affect one particular group			
Have those affected by the policy / decision been involved?			

Tenants have previously been notified of the policy via newsletters and letters

Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.	Positive Impact(s)	Negative Impact(s)
What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)	Satisfaction/dissatisfaction will be recorded through CX Feedback and any necessary policy/procedural changes implemented following this.	

Signed:	<i>Elaine Somerville</i>
Dated:	15/6/21

Appendix 2 GDPR Impact Assessment

Name of Policy to be assessed	Ending a Joint Tenancy	New policy or revision of existing?	Revision of existing policy
Person(s) responsible for assessment		Elaine Somerville	
Briefly describe the aims, objectives and purpose of the policy.	The aims, objectives and purpose of the policy are to: <ul style="list-style-type: none"> • To give clear guidance on the process for dealing with ending a joint tenancy • To ensure that all requests to end a joint tenancy are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy • To advise customers of the complaints process 		
Which type of data will be used by implementation of this policy? (e.g. personal, sensitive or special category)	Personal data will be used during the implantation of this policy		
What outcomes are wanted from this policy? (e.g. necessary to meet legal obligations)	The outcomes wanted from this policy are: <ul style="list-style-type: none"> • To give clear guidance to staff and tenants on the process for dealing instances of ending a joint tenancy • To ensure that all requests to end a joint tenancy are dealt with in line with in accordance with legal provisions and contractual terms contained within the tenancy agreement • To ensure that any requests are dealt with in accordance with our equality and diversity policy 		
Which groups could be affected by the policy? (note all that apply)			
Tenants	X	Committee	
Employees		Contractors	
If the policy is not relevant to any of the data groups listed above, state why and end the process here.			
Have those affected by the policy / decision been involved?			
Tenants were previously notified of the policy through newsletters and via letter			
Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.	Positive Impact(s)	Negative Impact(s)	

What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)	The Association has systems and checks in place to ensure that personal data remains confidential.	

Signed:	<i>Elaine Somerville</i>
Dated:	15/6/21