



Cassiltoun Housing Association

GUIDANCE AND PROCEDURES Joint Tenancies

Date Approved	Proposed Review Date
October 2009	October 2012
Chair Person/Office Bearers Signature:	

Contents

1. Introduction

2. The Law

3. Granting a Joint Tenancy at the Start of the Tenancy

4. Granting a Joint Tenancy where an Existing Tenancy Exists

5. Amending a Joint Tenancy to a Single Tenancy

1. Introduction

1.1 The following guidance outlines when a Joint Tenancy can be granted. It provides guidance on the procedures and documentation involved and the actions required for:

Joint Tenancy at the start of a new tenancy

Joint Tenancy for an existing tenancy

Amending a tenancy from Joint to Single.

2. The Law

2.1 Please note that the **Housing (Scotland) Act 2001** has strict timescales for actioning tenancy changes:

Part 2 Assignment, Subletting, Exchange etc:

12. The landlord must intimate its consent or refusal and, in the case of refusal, the reasons for the refusal, to the tenant in writing within one month of receipt of the application.

13. If the landlord fails to comply with paragraph 12, it is to be taken to have consented to the application.

As per CHA Policy, within 28 days a letter either accepting or refusing the joint tenancy must be issued. (*Appendix 1 – Joint Tenancy Application, Appendix 2 – Granted, Appendix 3 Refused*)

3. Granting A Joint Tenancy At The Start Of The Tenancy

3.1 A joint tenancy may be allocated when a joint application for housing is made and both (or all) applicants want to be tenant. It is important to give advice to the applicants about the implications of this, particularly relevant where the applicants are not spouses or partners.

3.2 Please ensure that the details on the Housing Application form have been amended/updated with the correct family composition details.

4. Granting A Joint Tenancy Where An Existing Tenancy Exists

4.1 A joint tenancy may be allocated on the written request of both the existing tenant(s) and the prospective tenant(s) who apply to change the tenancy to a joint tenancy.

4.2 The tenant and prospective joint tenant must complete a Joint Tenancy Application.

4.3 Proof of identity must be provided together with proof that the house is the new joint tenant's only or principal home at the time of the application (or is intended to be). However, the prospective Joint Tenant does not need to have lived in the property for any specific time period prior to applying for a Joint Tenancy.

4.4 If a tenant wants to change his or her joint tenancy, any existing joint tenant must agree in writing. e.g. in cases where the application is made to amend the joint tenancy (2 people) to include 3 people this can be dealt with as a Joint Tenancy if all the joint tenants are related.

- Please note that if three or more people apply to be Joint Tenants and they are not related, the let must be dealt with as a House of Multiple Occupation (HMO).
- There is a separate process for HMOs and advice must be obtained from the Head of Operations before proceeding.

4.5 Where there is a spouse or partner who is not currently a joint tenant and who is not applying for joint tenancy, they must give consent to the application as it affects their tenancy rights.

An application for Joint Tenancy must be granted unless there are reasonable grounds for refusal. For example, grounds for refusal could include:

- The granting of the joint tenancy would result in serious overcrowding
- Where we would not normally grant a joint tenancy due to our Allocation Policy
- The incoming joint tenant has Former Tenant arrears and has not made or kept to an arrangement to repay for 3 months.
- There is an ASBO for the current tenant/incoming tenant

4.6 The general rule of thumb is that in all circumstances we must be seen to be reasonable, therefore it will only be by exception that an application for joint tenancy is refused.

4.7 When the request has been made and the relevant documentation provided, (e.g. verification of the new joint tenant's details as per sign up procedures, debt check etc), the existing tenant and incoming tenant will sign the Joint Tenancy Agreement.

4.8 The signing of this Agreement by both tenants is the legal acceptance by the existing tenant to transfer half his/her tenancy rights and responsibilities and the acceptance of the joining tenant.

This is an amendment to the existing tenancy agreement, which when completed is attached to the original agreement.

4.9 The new joint tenant must be given a copy of the original agreement and joint tenancy agreement. The original tenant receives a copy of the new Joint Tenancy Agreement.

PLEASE NOTE THAT THIS IS NOT A NEW TENANCY SO DO NOT TERMINATE THE TENANCY AND CREATE A NEW TENANCY.

The records are then updated on SDM:

Housing Benefit - Important note

The normal procedures for new tenants should be followed as required. Housing Benefit form(s) should be completed in full and provide details of the date the tenancy became a joint tenancy. The form should be submitted to the local revenue benefit centre as soon as possible to ensure there is no loss of entitlement, which could result in either an overpayment or loss of benefit.

For full guidance please contact your local revenue benefit centre. There are too many scenarios to give full guidance on every eventuality, however, the following give an indication of the types of issues that must be addressed:

Couples, either married or cohabiting must complete a Housing Benefit/change of circumstances form. Housing benefit will assess the couple as one claim.

Joint tenants, where there is no relationship as above (i.e. brother and sister or two friends). Each joint tenant must submit an individual claims with their own circumstances. Housing Benefit will then assess based on the joint tenancy rent which is apportioned to calculate how much Housing Benefit is due to each tenant.

5. Amending A Joint Tenancy To A Single Tenancy

5.1 Amending a tenancy from Joint to Single is in effect ending the interest of one party in the tenancy. Subsequently the tenancy rights for the remaining joint tenant continue. The tenancy can only be amended from joint to single in the following circumstances:

The Joint Tenant can end his/her interest by giving 4 weeks written notice to the landlord and other Joint Tenant. (Housing (Scotland) Act 2001 Part 2 Chapter 1 Section 13).

Where a couple are joint tenants and one of the partners wish to amend the joint tenancy to be a single tenancy this may be done as long as the other joint tenant (partner) agrees and confirms that they are ending their interest in the joint tenancy in writing as above.

Where a joint tenant is in hospital/care and the final decision has been made that they will not be returning to the tenancy, written notification from the tenant is required. If the tenant is unable to do so, their representative can give approval if they have power of attorney or guardianship rights. Where appropriate, this can also be provided by Social Work Services or Hospital Consultant. In this instance both tenants (or the remaining tenant and the representative of the outgoing tenant) must sign the assignation form, which should be attached to the original tenancy agreement.

On the death of one of the Joint Tenants (see succession procedures). A copy of the death certificate should be attached to the original tenancy agreement

After the abandonment of the tenancy by one of the Joint Tenants. Ensure that the separate guidance on abandonment procedure for Joint Tenants is followed. The date the interest in the tenancy ends in this case is not less than 8 weeks after the second Aband notice is issued The Aband papers should be attached to the original tenancy agreement.

- Please note that there also must be written consent from any spouse or partner where he/she is not a joint tenant as they will have pre-existing tenancy rights.

5.2 When the request has been made and relevant documentation is provided (proof to support the joint tenant's termination of interest in the tenancy) it is important that this documentation is held on file.

5.3 It is important that documentation to support the amendments from joint to single or single to joint tenancy is completed fully and attached to the tenancy agreement, so that in the event of legal action by GHA, proof of any tenancy amendment is available and can be demonstrated to the courts. If arrears action is raised the total arrears can be sued for, as this is the responsibility of the current tenant(s) as the amendment of tenancy was carried out by process of assignation.

5.4 If action is raised there is no need to separate the arrears amount, as the remaining tenant is joint and severally liable for any arrears accrued. By accepting the single tenancy, technically they assume responsibility for the full amount of arrears.

5.5 Under no circumstances should the current tenancy be ended and a new tenancy created as the remaining tenant has tenancy rights prior to the date of the joint tenancy application (this will be dependant on the tenancy history).

The records are then updated on SDM.

5.6 Both tenants should be advised of the joint and several liability for the arrears to this date. Where possible the outgoing tenant should be asked to make and sign an arrangement to repay any outstanding arrears. However, in reality by accepting the sole tenancy, the remaining tenant assumes full responsibility for any debt. Accordingly, an arrangement to repay from the remaining tenant should also be taken and loaded on toSDM.

Housing Benefit - Important note

The remaining tenant should be advised that the tenancy change will automatically go to GCC. If he/she is on Housing Benefit a Housing Benefit Change of Circumstances form (as used for transferring tenants) must be completed in full and should provide details of the date the remaining tenant became the sole tenant.

Appendix 1

9. Joint Applicant(s). List all previous addresses since your 16th Birthday **Address Landlord Tenant/lodger/owner Date of Leaving Reason for Leaving No**

10. Have you used another name in the last 10 years? If YES, please give details

We hereby certify that the particulars in this application are true.

We understand that any false or misleading information or withholding of any relevant information now and at any time may result in the tenancy granted to us being terminated.

I wish to give up the tenancy of the above house in favour of a Joint Tenancy.

Signed
tenant.....

Date.....
.....

I wish to make application for Joint Tenancy

Signed
applicant.....

Date.....
.....

Where there is a current spouse or partner of the original tenant (who is not currently a joint tenant), they must agree to the joint tenancy.

Signed
spouse/partner.....

Date.....
.....

Declaration: "CHA is registered under the Data Protection Act 1988. Cassiltoun Housing Association is under an obligation to properly manage public funds. Accordingly information you have provided on this form may be used to prevent and detect fraud and may also be shared for the same purpose with public bodies or other organisations which handle public funds.

I understand it is my legal responsibility to inform CHA of any persons aged 16 and over who live in my home”

Initial

Date.....

Initial Date Received..... Systems
Updated.....

Debt Check..... Reason for
Decision.....

Proof Of ID seen (copies attached)

Payment Ref No.....
Approved/Refused.....

Our Ref:

Date

Dear.....

JOINT TENANCY APPLICATION

Thank you for your recent application for Joint Tenancy betweenand at the above address. I am happy to advise you that your application has been approved. I would ask that you both call in to this office on(date)(time) to sign the appropriate paperwork.

If this time is inconvenient please do not hesitate to contact me to arrange a more suitable appointment.

Please remember to please bring proof of identification for both of you. As this tenancy change may affect any housing benefit in payment, you must advise your local GCC, Finance Department at 61 Dougrie Drive, Castlemilk. GLASGOW. G45, providing proof of identification and income.

Yours sincerely,

Housing Officer

Appendix 2

Our Ref:

Dear.....

JOINT TENANCY APPLICATION

Thank you for your recent application for Joint Tenancy betweenand..... . Unfortunately I must refuse your request due to the following reason(s):

Please do not hesitate to contact me should you wish to discuss this further.

Yours sincerely

Housing Officer