



**Variation of Tenancy Policy
2007**



1. INTRODUCTION

- 1.1. The purpose of this Policy is to explain and give guidance on the different types of tenancies available to the Association. The Policy also looks at the circumstances in which tenancies may change status.

2. POLICY STATEMENT

2.1. The Associations main aims and objectives are:

- To set a clear framework within which to process joint tenancies for any tenants or prospective tenants who may wish to enter into a joint tenancy
- Clarify the position and conditions of joint tenancies for staff and tenants
- To issue the correct tenancy agreements to tenants
- To identify the correct type of variation when a tenancy changes status
- To process variations in tenancies quickly and efficiently

3. IMPLEMENTATION

3.1. *The following types of tenancies are issued to tenants.*

- Secure Tenancies
- Assured Tenancies
- Assured Shorthold Tenancies

3.2. *A tenancy can vary through one of the following examples:*

- Succession
- Assignment
- Change in Law
- Sub-letting
- Orders from Courts
- Relationship breakdowns
- Mutual Exchange
- Left in occupation
- Unauthorised Occupants



3.3 Succession

The Law

- The right of succession for secure tenants is set out in the Housing Act 1985, Sections 87-90
- The right of succession for assured tenants is set out in the Housing Act 1988, Section 17
- These rights are not the same, and reference should be made to the relevant legislation where anything is unclear.

Secure Tenants

There is only one right of succession on a secure tenancy

To qualify the successor must have been using the premises as his/her only, main and principal home when the tenant died; succession is not available to someone that moved in immediately following the tenant's death. He/she must have resided with the tenant for a minimum of 12 months prior to the tenant's death (if the tenant moved into the property during the past 12 months, residence with the tenant at the previous address accounts towards 12 months).

The successor must be either the deceased tenant's spouse or other family member. Common law husband/wife qualify as a family member but not as a spouse. The spouse takes precedence over other relatives in the property. In these circumstances spouse includes civil partner.

Order of succession

The following order of succession applies to secure tenancies:

- Joint Tenancy – to surviving joint tenant by survivorship (technically this is not a succession).
- Spouse (including civil partner) or partner (assured tenancies only) living in the property as their only or principal home at the date of the tenant's death.
- Family member living in the property as their only or principal home at the date of the tenants death and who lived with the tenant for the 12 months before the tenant died

Under section 113 of the Housing Act 1985, a family member is defined as:

- Parent or grandparent
- Child (including step or illegitimate child) or grandchild;
- Brother or sister;
- Uncle or aunt;
- Niece or nephew



- A partner(different or same sex, other than a civil partner)is treated as a family member

The effect of succession

Succession operates immediately and automatically on the death of a tenant. Should the tenant try to pass on the tenancy via a will or assignment to anyone other than the statutory successor, this will be invalid.

Where there is a succession, no new tenancy is created. Therefore no new tenancy agreement is issued. The new tenant (successor) gets the existing tenancy of the deceased tenant.

Successors do not legally inherit arrears unless the previous tenancy was joint. In this case, as joint tenants are "jointly" responsible it should be explained that any arrears continue with the tenancy.

All other successors should be requested to take responsibility for arrears and sign an agreement to this effect.

If, however, at a future date Court action for arrears against the successor is commenced these previous arrears cannot form part of the claim. Particulars of claim would have to be based on arrears that have accrued since the date of succession.

Where successors refuse to sign an agreement the arrears in question should be transferred off the rent account into a sundry debtors account and be pursued via the executors of the will or the estate.

An injunction or ASBO obtained against the deceased tenant is not enforceable against the new tenant.

No successor

If there is no successor to the tenancy then the tenancy will lose statutory security and can be ended by notice to quit from the Association.

Non statutory Succession

There may be occasions when the Association may wish to grant a tenancy to someone who does not have the statutory right to succeed. This may happen for example if an adult son/daughter of a secure tenant has remained in the family home, perhaps to look after the tenant in old age. If the tenancy was originally a joint tenancy with the tenant and their spouse and is now held by survivorship (see 3.10) the resident, son/daughter will have no statutory protection on the tenant's death. Cosmopolitan will consider granting a new tenancy in these circumstances, although it should be noted that that as a 'new 'tenancy it would be an assured tenancy and any arrears/notices applying to the old tenancy would and could not be enforced in respect of the new.



Survivorship

Survivorship unlike succession is found in common law statute. Survivorship applies when a tenancy is held jointly by two or more persons, one of whom dies. The tenancy will then automatically pass to the surviving tenant/s by survivorship.

Assignment in lieu of succession

A secure tenant can assign the tenancy to someone that would have been qualified to succeed had the tenant died.

Secure tenants rights to assign the tenancy to a qualifying successor apply generally and like succession are not subject to ratification by the landlord.

Where a secure tenancy has been assigned in this way the assignee counts as a successor and there can be no further succession to the tenancy.

Because assignment does not involve the creation of a new tenancy agreement any outstanding notices will continue to apply and the assignee will also assume responsibility for any rent arrears.

Assured Tenants

There is only one right of succession on an assured tenancy

Succession

Succession under the Housing Act 1998 applies to assured period tenancies only, not fixed term, assured shorthold tenancies. However following amendments in the 1996 Housing Act, most assured shorthold tenancies are now likely to be periodic tenancies with the right of succession.

Statutory rights in relation to assured tenancies are less generous than secure tenancies. However the Association will provide that assured tenancies be granted the right to possession.

The Association will consider that if a tenant dies and there is another member of the household (such as a carer partner or other household member who does not have the right to succeed) who:

- Has been living with the tenant for 12 months prior to the tenants death, or
- Has been looking after the tenant for 12 months prior to the tenants death, or
- Has accepted responsibility for the tenants dependants

The Association should grant a tenancy to such person (or persons) if they request it and they are satisfied that this is a priority when viewed in the context of the other demands on



housing and housing needs in that area. This could be either in the same home or in suitable alternative accommodation.

On the death of an assured period tenant the tenancy will pass by succession to the tenant's resident spouse or common law partner providing that the deceased tenant was not a successor.

To succeed the tenant's spouse or partner must have been occupying the dwelling as his/her only or principal home at the time of the tenant's death but there is no qualifying period. The tenant's charter does however stipulate 12 months and this is the normal practice the Association will follow.

The effects of succession

Succession operates immediately and automatically on the death of the tenant. It is invalid if the tenant tries to bequeath the tenancy to anyone other than a statutory successor.

Because succession does not involve the creation of a new tenancy any notices served on the old tenant continue to apply to the successor, who also assumes responsibility for any rent arrears.

Non statutory succession

Non statutory succession occurs when the Association may grant a tenancy to those who may not qualify to succeed by statute but a tenancy agreement is granted.

As this would now be a new tenancy agreement, no responsibility for rent arrears or outstanding notices relating to the old tenancy will be the responsibility of the 'successor'

Survivorship

Same rules apply here as with secure tenants (see 3.10)

Assignment in lieu of Succession

The 1998 Housing Act stipulates that assured tenancies cannot be assigned only with the consent of the landlord. The Association will permit assignment only in the circumstances where a secure tenancy could have been assigned. Assured tenants therefore can have the same rights as described in 3.11

No Successor

The same rules apply to that of a secure tenant



Under Occupation/Adapted properties

If succession would result in under-occupation the Association could apply for a possession order under Ground 16, Schedule 2, Housing Act 1985 (within 6-12 months of the tenant's death). However it is unlikely we would pursue this.

If the property is unsuitable for the new tenant because it is under occupied or specially adapted, the Association will consider offering the new tenant suitable alternative accommodation. This accommodation must be suitable for the new tenant and his/her family. In particular it must not be significantly further from the new tenant's place of work. If the new tenant refuses to accept the offer, the offer should be recorded along with the reason for refusal. Possession proceedings can be started on ground 16 (secure tenancy) or ground 9 (assured tenancy). These grounds are discretionary, so possession claims brought on this basis require very careful preparation

Suspended Possession Orders

Where succession has occurred the 'successor' may not be liable for current suspended possession orders in place, (but will still be responsible for rent arrears). The reason being should the suspended possession order have been breached in any way at all, during the tenancy (even a late payment of a rent agreement) security of tenure is lost and that tenant is treated as a tolerated trespasser. Therefore if there is no secure tenancy then there is nothing to succeed to.

3.4. Assignment of tenancy

Assignment of a tenancy takes place when a tenant transfers his/her interest in the tenancy to another person. It is not the ending of a tenancy and the creation of a new one.

Secure Tenants

Any secure tenant unless their tenancy prohibits it may assign the outstanding term of the tenancy to some other person. The Housing Act 1985 states that generally secure tenancies may not be assigned. There are however, three exceptions:

1. Assignment to a potential successor who would have succeeded to the tenancy if the tenant died (see 3.11)
2. Assignment by way of exchange (see Mutual Exchange Policy & Procedures)
3. Matrimonial Orders, The Courts have extensive powers under the Matrimonial Causes Act 1973, Matrimonial & Family Law Act 1984, The Family Law Act 1996, and the Children's Act 1989 to direct that a tenancy will be assigned for example as part divorce arrangements. Such an assignment does not count as a succession. The assignee will retain the succession status of the holder of the tenancy before it was assigned.

Assured tenants



The 1998 Housing Act states that it is a term of every assured periodic tenancy that unless the tenant paid a premium for its grant or renewal that it may be assigned only with the consent of the landlord Assignment can also take place, via the following:

1. Assignment by way of exchange (see Mutual Exchange policy & procedure)
2. Matrimonial Orders, The Courts have extensive powers under the Matrimonial Causes Act 1973, Matrimonial & Family Law Act 1984, The Family Law Act 1996, and the Children's Act 1989 to direct that a tenancy will be assigned for example as part divorce arrangements. Such an assignment does not count as a succession. The assignee will retain the succession status of the holder of the tenancy before it was assigned.

3.5. Lodgers & Subletting

A lodger is a person who shares all the facilities of a dwelling and is treated as an integral member of a family or household. Their legal status is that of a licensee

A sub tenant will normally have exclusive rights over one part of a dwelling (usually a bedroom) even though they may share the use of other parts of the accommodation. Having a key to a room is a major test of the difference between a lodger and a sub-tenant

Secure Tenants

Lodgers

Secure tenants have the right to take in a lodger without the landlord's permission, however Cosmopolitan's tenancy agreements state that permission must be sought first.

Sub-letting

Secure tenants have the right to sublet or part with possession of part of their home provided they have the landlord's written consent. If a tenant sublets or parts with the whole of the property then the tenancy ceases to be secure, even if the sub tenancy is ended

The Association will not unreasonably withhold consent to subletting and in making a decision will take the following into account whether:

- the proposed subletting would lead to statutory overcrowding
- the accommodation is sheltered or supported housing
- the landlord intends to carry out works to the property which would affect the accommodation likely to be used by the sub-tenant

Assured Tenants

Lodgers



There is no statutory provision about whether an assured tenant can take in a lodger; however under terms of the tenants guarantee they can do so, with the prior consent of the landlord. This consent cannot be unreasonably withheld.

Sub-letting

In April 1998 the Housing Corporation introduced a new performance standard requiring registered social landlords to stop granting sub-tenancies as part of the dwelling, however, landlords are still expected in most circumstances to allow assured tenants to take lodgers.

The Association can withhold consent to assignment and sub-letting on any ground it chooses whether reasonable or unreasonable. Section 15 of the Housing Act 1998 provides that the landlord is bound by section 19 of the Landlord and Tenant Act 1987 that requires landlords not to unreasonably withhold consent to assignment.

The Associations tenancy agreements clearly state that assured tenants must not take in any person as a sub-tenant or lodger with first obtain the Associations permission. The Association must be informed of the name, sex, age of any intended lodger or sub-tenant and any charge which they intend to make for service provided for example laundry, meals etc.

The Association will not unreasonably withhold consent to sub-letting. In making a decision it will take into account whether:

- The proposed sub-letting would lead to statutory overcrowding
- The accommodation is sheltered or supported housing
- The Association intends to carry out works to the property which would affect the accommodation likely to be used by the sub-tenant

3.6. Relationship Breakdowns

Rights of Occupation

Sole Tenancies

Where a relationship has broken down, there are a number of ways in which a tenancy can be amended under the following acts:

- Matrimonial Causes Act
- Children's Act
- Family Law Act

The spouse of a tenant cannot be removed from the home without a court order and has the right to occupy. This right only lasts as long as the marriage i.e. until decree absolute.

The couple will decide between themselves on how to deal with the matrimonial home and will inform the divorce courts of their agreement.



The Courts can make a decision if there is no agreement made between couples; this is called a Property Adjustment Order. The Property Adjustment Order under the afore mentioned acts gives an order for the tenancy to be transferred to another person and these orders can be made at any time

Order to transfer a tenancy

An order to transfer a tenancy will normally be made under the Family law act this is a direct order of the court and will not require an assignment. In the cases of spouses the home property must have been occupied as the matrimonial home.

Order to assign a tenancy

An order to assign a tenancy will normally be made under the Matrimonial Causes and Children's Acts.

When a transfer of tenancy has been ordered under the Family Law Act the courts can order that one party compensate the other for loss of the tenancy. The courts can also make either or both parties responsible for any arrears that may have accrued prior to the transfer. If this were to happen the Courts would give the Association the opportunity to be heard before making an order.

Married Couples

The same options apply with resolving joint tenancies held by married couples as with sole tenancies. In this case neither tenant has to rely on matrimonial home rights.

If one party is willing to give up their interests in the joint tenancy, or they are ordered to do so by the courts then the next section relating to joint tenancies in this policy should be referred to

Joint Tenancies

A joint tenancy is one where two or more persons, by agreement, are given an Identical interest in a property and are effectively treated as if they are one single tenant.

Joint tenants are jointly and individually liable for the obligations of the tenancy. for example, they are both liable for paying the whole rent. Therefore, if one joint tenant leaves, the other can be pursued for the whole of any arrears owing.

Temporary absence by one joint tenant does not end their right of occupation even if they have been absent for a considerable period of time. The presence of the other partner in the property ensures that the absent tenant retains security of tenure. Therefore, unless the tenancy is legally terminated (see below), the absent tenant can return at any time and claim their tenancy rights.



One joint tenant cannot exclude the other without a Court Order (see section 6 Relationship Breakdowns).

By serving a Notice to Quit, one joint tenant can terminate the whole tenancy without the consent of the other.

Tenancy Rights of Married Tenants

Once a couple is legally married both have equal rights to occupy the property whether or not the tenancy was originally sole or joint. A spouse's right to occupy the home cannot be removed unless by death or divorce, however it can be taken away temporarily if one spouse is seeking a court order or an injunction under domestic violence legislation (see section 6 Relationship Breakdowns)

The right of occupation by a spouse only applies to a property where both parties have lived together as man and wife or civil partners. Therefore if a married couple separate and one spouse is granted a new sole tenancy of a new home, the other spouse does not have the right to live in the new home.

Terminating a joint tenancy

There are a number of ways in which a joint tenancy can be ended or changed into the sole name of one partner:

- By notice to quit and/or possession order granted to the Association in the courts on one of the grounds laid down in either the Housing Act 1985 or Housing Act 1988.
- By Notice to Quit issued to the Association by one or both joint tenants which would completely end the tenancy
- By Legal Assignment from one or joint tenants to the other
- By a property adjustment order made during divorce, separation or guardianship proceedings
- On the death of one or both tenants

Notice to quit served by a tenant

To be valid a NTQ must:

- Be in writing
- Include the address of the tenancy;
- Must allow a minimum of 4 weeks (28 days) between the date the notice is served and the date the notice will take effect;
- Be dated and contain the signature of the joint tenant giving notice;
- The period of notice must end on the first or last day of the tenancy period.



Were one tenant has left the property

Informal requests from one joint tenant asking for their name to be taken off the tenancy have no legal effect and will not terminate the individual's interest in the property. In these circumstances the tenant who is leaving or has left should be advised to serve a NTQ as stated above or by assigning their interest in the tenancy to the other joint tenant.

Requests from remaining tenants to be made sole tenants.

When an informal request like this is received from a remaining joint tenant where the other party is absent then there is no obligation on the Association to take any action. There may however be circumstances where it is appropriate to resolve the situation by the remaining tenant serving notice to terminate the joint tenancy on the understanding that they will be issued with a new sole tenancy.

Because the notice has the effect of removing rights of the absent party, such requests should be fully investigated.

Every effort should be made to contact the absent tenant and they should be informed of the proposal and asked to give up their interest in the tenancy voluntarily. If this is not obtained strong evidence is required that the absent tenant has been absent for at least 12 months and is unlikely to return. If there is no evidence available a statement certified by a solicitor (statutory declaration) may be accepted from the remaining tenant.

NB: A remaining tenant may be signed up as a sole tenant on the condition that all rent arrears and/or sundry debts are cleared. Any arrears inadvertently remaining on the account from the joint tenancy must be identified and recovered separately from any new 'current' arrears.

It is important to remember that new tenancy agreements would have to be signed.

Allocating to Joint tenants

Were there is a new letting or transfer, joint tenancies may be offered to

- Married couples
- Civil Partners
- Couples nominated jointly to the Association
- Other established couples who can show they have been living together for a period of at least one year.

In call cases, both parties must intend to occupy the property as their only or principal home.

If only one of a couple has been nominated for housing by a Local Authority/referral



Agency then a sole tenancy only should be granted. If a person offered a sole tenancy arrives at sign up with a partner and requests a joint tenancy this should be denied initially, although a joint tenancy may be created at a later date if they fulfil the necessary criteria (see procedure).

Where a tenancy is offered in joint names but only one party arrives to sign up the relevant Housing Services officer must check that the details relating to the offer are still valid. If one party is absent due to genuine reasons e.g. working away from home, and the Housing Services Officer is sure they have every intention of signing, then the tenant who is present should be signed up. Every effort should be made to sign up the absent party as quickly as possible thereafter.

If in any doubt, the Housing Services Officer should not sign up the party that has turned up until further checks can be made.

Sole Tenancies

A sole tenant requesting a joint tenancy

There is no obligation to grant a joint tenancy from a sole tenancy and agreement to do so it is entirely at the discretion of the Association. The Association will consider creating a joint tenancy where a tenant has formed a long-term relationship with a co-habiting partner or where the tenant wishes their friends/siblings to join the tenancy.

By adding a new name to a tenancy, means a fresh tenancy has been created. Therefore new tenancy agreements have to be signed and the tenancy starts with a 'clean slate'. Therefore any arrears should be cleared by the sole tenant prior to approval. The new joint tenancy will be the same status as the previous sole tenancy i.e. the sole tenancy was secure; the new joint tenancy will be secure.

Grounds for refusal of a joint tenancy include:

- rent arrears
- a current possession order
- history of relationship breakdown
- one or both parties not living in the property for at least one year
- one or both parties not intending to occupy the property as their
- only or principal home

The sole tenants vacates, leaving a partner and children in occupation

Where the tenant has vacated and left a partner and children in occupation, the partner can apply for an order under section 15 of the Children's Act 1989 to remain in the property, if necessary.

Firstly the tenancy of the legal tenant must be ended using guidance given in this policy and Variation of Tenancy Policy 2007



procedure.

Prior to issuing a Notice to Quit, Association staff must ensure that no order has been made under the Children's Act 1989.

If the circumstances are reasonable for the partner to remain in the property with their children, at the Association's discretion a new tenancy can be created. This must be approved by the Tenancy Management Co-ordinator; if they are satisfied that the tenant's legal status has been ended correctly.

The sole tenant has vacated taking children, leaving the partner in occupation

Where the sole tenant has left the property taking family members, but leaving a partner in occupation, the Association must establish:

- If the sole tenant has or wants to relinquish tenancy
- If the sole tenant has fled, via domestic violence, relationship breakdown
- If the sole tenant requires alternative accommodation either temporarily or permanently
(for domestic violence cases see ASB Policy & Procedure)

If the Association is satisfied that the partner should not be occupying the property then the Unauthorised Occupants Policy & Procedure should be followed).

3.7. Ending a Tenancy

At common law, there are several ways a tenancy can be ended. The application of common law rules is modified in some respects by the Protection from Eviction Act 1977, which applies to residential properties generally, whether or not they are entitled to further protection under the Rent Act 1977 or the Housing Acts 1985, 1988, and 1996.

Notice to Quit

A NTQ can be served by either the Association or the tenant on each other and will have the effect of ending a tenancy at the end of a period. Serving NTQs where there is a joint tenancy is explained in section 7.

It is important that NTQs are served in accordance with the governing rules.

At common law, the notice

- Must expire at the end of a period of the tenancy or on a day when rent falls due
- Must be of at least one period of the tenancy (subject to a maximum of 6 months i.e. fixed term tenancies)

The Protection from Eviction Act 1977 now steps to impose three further requirements that where the premises are let as dwellings, the notice:



- Must be at least 28 days (not counting the day on which the notice is served)
- Must point out that the Association must get a court order before the tenant can be evicted and cannot apply for an order until the tenancy has ended and we must remind the tenant of sources of advice

N.B if the property has been abandoned or there is an implied surrender after the expiry of the notice, no court order is necessary.

Note that all of the above rules, except the last apply even if the notice is being served by the tenants on the Association.

Surrender

Any tenancy whether fixed term or periodic may be brought to an end by surrender. It is essential to recognise that surrender, unlike a NTQ is a consensual act requiring the agreement of all concerned. It is therefore open to the Association to refuse to accept the tenants offer to surrender the tenancy and to insist that it continue until the end of term. In general day-to-day circumstances, this does not happen, as the tenant will vacate the property whether the Association consents or not.

Surrender is in effect an assignment of the remaining term of the tenancy back to the Association.

All termination of tenancies where surrender is given, the tenant must sign a surrender of tenancy form (see procedure)

Express Surrender

Ideally surrender should be carried out by deed that is a legal document signed by the tenant and the Association agreeing that the tenancy will come to an end on a specified date.

Implied Surrender

Where surrender is offered and accepted by both tenant and the Association this is called implied surrender. An example is were the tenant vacates the property and returns the keys, giving 1 day from 1 weeks notice (if at all given). It is reasonable in the absence of any formal notice from the tenant, for the Association to interpret the tenant's action as an offer of surrender that the Association can accept. Further details of implied surrender are given in the Abandoned Properties and Absent Tenants Policy.

Court Order

For the Association the most important way of ending the tenancy is by court order on one of the grounds for possession of a secure or assured tenancy.

The court also has power under the Landlord and Tenant Act 1954 to end a tenancy of

Variation of Tenancy Policy 2007



dilapidated land if the tenant cannot be found.

4. RESPONSIBILITY

- 4.1. Overall responsibility for the implementation of this policy lies with the director of Housing.
- 4.2. The Tenancy Management Co-ordinator is responsible for the day-to-day management and implementation of the variation of tenancy policy, for the application of the policy and procedures, monitoring and reviewing performance managing the budget, and making recommendations for improvement.
- 4.3. Tenancy Management staff have a responsibility for the delivery of the Variation of Tenancy policy.

5. CONSULTATION

- 5.1. The Association will consult on an annual basis with the staff, outside agencies and benchmarking groups to promote continuous improvement and develop good practice in this policy
- 5.2. Prior to making any changes to this policy the Association will consent and consider the view of:
 - All relevant staff
 - Senior Management Team
 - The Tenants' Forum
 - Board of Management
 - Residents, Tenants Groups, individual interested tenants
 - All relevant outside agencies

6. REVIEW

- 6.1 The Association will formally review its Allocations Policy on a 3 yearly basis, unless changes in legislation or regulation require an earlier review.
- 6.2 Findings and recommendations will be presented to the Association's Board of Management after the views of the Forum have been considered. A review team will carry out each review.
- 6.3 Progress reports will be made to the Board of Management and Forum, to enable monitoring against strategic aims and objectives and agreed performance indicators. Performance data will be included in the annual report to tenants



7. TRAINING

7.1. The Association will provide all staff responsible for implementing this policy with comprehensive training

7.2. Training will be given to:

- New staff
- Existing staff on an annual basis as a refresher/update as required
- All relevant staff after change to policy/legislation
- To relevant outside agencies
- Any other times as identified by the Director of Housing Services, Team Leaders or Group Policy and Performance Manager

8. ASSOCIATED DOCUMENTS

8.1. The Association has the following relevant documents

- Anti Social Behaviour Policy
- Rent arrears policy
- Complaints policy
- Allocations policy

8.2. This Policy will replace the following policies:

- Succession Policy
- Assignment Policy
- Relationship breakdown policy
- Joint Tenancies Policy

9. POLICY REVIEW SUMMARY

Policy Title	Variation of Tenancy Policy
Dated Created	24 April 2007
Person Responsible	Director of Housing Services
Version	Version 1



Date last amended	Not applicable
Authorised by	Board of Management
Review Period	Every 3 Years
Review Committee	Board of Management
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