



Assignment, Mutual Exchange, and Succession Policy

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POLICY SUMMARY

The aim of the policy is to outline the circumstances under which tenants may assign their tenancy to someone else. It aims to ensure that assignments take place in accordance with the relevant legislation and that the contractual rights and obligations of the tenancy agreement are adhered to.

1. APPLICABILITY

- 1.1 This Policy applies to all tenants of EPIC Housing who meet the required criteria as set out in the relevant legislation.

2. INTRODUCTION

- 2.1 An assignment is a way that a tenant can transfer their tenancy to another person. On assignment, the assignor's (outgoing tenant) legal interest in a property is passed to the assignee (incoming tenant), who takes over that interest in the property and becomes the tenant.

3. CONTEXT

3.1 Definitions:

- An assignment is a transfer of the tenancy during the lifetime of the tenant.
- A succession is where the tenancy is transferred upon the death of the tenant.
- An assignment involves a tenant requesting permission to sign over their tenancy rights to another person. The assignment does not create a new tenancy but results in the transfer of the current tenancy agreement to the new tenant or tenants.
- The tenancy only allows a tenant to assign their tenancy to a person who would be able to succeed to the tenancy had the tenant died.
- The next section sets out the criteria for succeeding to a tenancy and therefore the situations in which a tenant can request that their tenancy be assigned to somebody else.

3.2 What is the legal basis for assignment?

- Section 15 of the Housing Act 1988 prohibits assignment for assured (non-shorthold) tenancies unless there is an express contractual agreement by the landlord to allow assignment. Where there is an agreement that the tenant can assign with permission, then permission will not be unreasonably withheld.
- Tenants are not allowed to assign or pass on the tenancy except in the following circumstances:
 - by way of mutual exchange with a tenant of another Social Housing Landlord; or
 - if ordered to do so by the court in matrimonial proceedings or in accordance with Schedule 1 of the Children's Act 1989; or
 - to a person who would be qualified to succeed to the tenancy (such qualification being determined by the provisions of the Tenancy Agreement in the event of the tenant's death).

3.3 Joint tenancies

- One joint tenant cannot unilaterally assign their share of the joint tenancy to the other joint tenant, but both joint tenants can together agree to assign the whole of the tenancy to one of them, or one tenant can release their interest in the tenancy.

3.4 Succession

- Succession describes the circumstances where somebody else (the successor) living with the tenant may inherit the tenancy after the tenant's death.
- There are two forms of succession:
 - Statutory succession
 - Contractual succession
- In every case, a joint tenant will automatically inherit the tenancy on the death of the other joint tenant under the principle of survivorship. This counts as a succession to the tenancy, with no further succession rights remaining. In other succession cases, we need to refer to the tenancy agreement.
- A successor is:
 - a spouse or civil partner or person living with the tenant as a spouse or civil partner;
 - a person from whom the tenancy was inherited;
 - a person that would have been entitled to succeed had the previous tenant died and to whom the tenancy was assigned under the terms of this agreement; or
 - a tenant by survivorship when one of two or more joint tenants has died.

3.5 Succession (other than spouse)

- On the death of a sole tenant who is not a successor, we will seek possession under Ground 7 of schedule 2 of the Housing Act 1988 only if the person that inherits the tenancy:
 - is not a member of the tenant's family; or
 - did not reside with the tenant for the twelve months preceding the tenant's death; or
 - did not occupy the property as his or her only or principal home at the time of the tenant's death; or
 - will not agree in writing to abide by the terms of the tenancy.
- We may seek possession if, six months after the death of the tenant, there has been no grant of probate or letters of administration.
- A member of the tenant's family can succeed to the tenancy if they can prove that they have lived with the tenant for at least 12 months prior to the tenant's death and were occupying the property as their principal home at the time of the tenant's death.

3.6 Tenancies granted from August 2012

- Following the introduction of the Localism Act 2011, Registered Providers have more flexibility in defining who can succeed to a tenancy. We have chosen to adopt the minimum statutory provision which is:
 - On the death of a sole tenant who is not a successor, that the tenancy shall pass to the tenant's spouse, civil partner, or other partner if he or she occupies the premises as their only or principal home at the time of the tenant's death.
- A successor is:
 - a tenant by survivorship when one of two or more joint tenants has died; or
 - a partner in whom the tenancy was vested under this clause; or
 - a person that would have been entitled to succeed had the previous tenant died and to whom the tenancy was assigned.

- There is no right of succession for a member of the tenant’s family under the new tenancy agreement, however, please see the section below which details the circumstances in which we may grant a new tenancy to a member of the tenant’s household.
- Circumstances where we may grant a new tenancy to a member of the household:
 - Where there is no successor to a tenancy, we may consider granting a new tenancy to the remaining occupant(s) based on the following criteria. This is not a formal succession, and a new Assured Shorthold tenancy agreement must be created if this discretionary power is used.
 - We were informed within 3 months of the death occurring that the remaining person(s) were living at the property.
 - The appropriate statutory authorities being notified that the remaining person is living at the property.
 - The remaining person being resident at the property for at least one year and can evidence this.
 - The rent account for the property is clear.
 - There are no other tenancy breaches.
 - The remaining person(s) meet our eligibility criteria for housing.
- Where the above criteria are met, we will normally grant a new tenancy to the remaining occupants of the property. The remaining occupants do not need to have a family connection to meet the above criteria.
- Where the remaining occupants do not meet the above criteria, the Chief Executive may approve the issuing of a Use-and-Occupation Agreement for a period of 6 months to enable the remaining occupants to make other arrangements to find a new home.

3.7 Mutual Exchange

- A Mutual Exchange occurs when two or more tenants swap homes. The permission of all landlords for each tenant is required. If either tenancy is a joint one, all joint tenants must agree to the exchange before it can go ahead.
- An exchange may take place between EPIC tenants, or where an EPIC tenant swaps their home with a tenant of a Registered Provider or Local Authority.
- Mutual exchanges are affected by either an assignment of the tenancies or by surrender and re-granting of each tenancy in accordance with the relevant legal and regulatory provisions. By Law, a landlord has 42 calendar days from the date of receipt of application (to carry out a mutual exchange), to give the tenants a decision.
- Failure to respond within the prescribed timescale means that the tenants are entitled to go ahead without consent in accordance with Section 92(4) of the Housing Act 1985.
- This policy reflects the expectations outlined in the Regulatory Framework for Housing in England and Wales and is set within the context of the Housing Act 1985 (as amended) and the Localism Act 2011. The tenure reform provisions contained within the Localism Act 2011 allowed registered providers to offer fixed-term tenancies on socially rented homes as well as affordable rented properties.
- We will comply with the requirements of the regulatory framework and provide access to a mutual-exchange service. We will either subscribe to such a service or pay the subscription fees for individual tenants who wish to

exchange. We will provide assistance to tenants who do not have access to the internet to access this service.

3.8 Assignments following relationship breakdown

- Tenants can seek a Property Adjustment Order as part of a divorce settlement or a relationship breakdown under the Family Law Act 1996, or an order under the Matrimonial Causes Act 1973, or Civil Partnership Act 2004, or the Children's Act 1989. If the order itself makes clear the tenancy is transferred from one party to another, the order must be appended to the original tenancy agreement and changes made to the computer system. A deed of assignment does not need to be signed. Sometimes a court can order one party to assign the tenancy to another. If such an order is made, the tenancy is only transferred when the deed of assignment is executed. Tenants should always be encouraged to obtain independent legal advice regarding a relationship breakdown.

3.9 Refusal to Exchange

- We will only refuse an application where one or more of the grounds listed in Schedule 3 of the Housing Act 1985 provides examples of where an assignment can be refused:
 - Where the individual is a probationary tenant or a licensee.
 - Where there is a possession order in force against the tenancy.
 - Where the property is a specialised/adapted unit, and the proposed assignee does not meet the criteria for this property.

3.10 Exchange without Consent

- Exchanges that take place without consent may result in:
 - Tenants being required to return to their original homes/tenancy.
 - A Notice to Quit being served seeking possession.

4 STATEMENT OF INTENT

- We will work together with tenants and customers to facilitate within the terms of this policy the effective management of Tenancy Assignments, Mutual Exchanges, and Succession to tenancies in a professional, empathetic way taking into account individual circumstances and best use of stock.
- We will comply with relevant, statutory, and regulatory timescales and obligations. Ensuring that tenants and customers fully understand the implications of tenancy assignment.

5 RESPONSIBILITIES

5.1 The Housing Manager is responsible for the following:

- Developing and implementing operational procedures to deliver the policy objectives.
- Embedding the policy through staff training, learning and development.
- Monitoring the overall effectiveness of the policy in terms of cost, quality, and time.
- Reporting as required the operational effectiveness of the policy in terms of cost, quality, and time.
- Ensuring that there are adequate checks and controls in place to ensure that this policy is enacted effectively.
- Evaluating, amending, and enhancing the delivery of the policy.

5.2 We will publicise our criteria to tenants and record feedback on the policy.

6 TRAINING

6.1 The Housing Manager will ensure that relevant staff are trained in the operational requirement of performing this policy and accompanying procedures.

7 MONITORING AND REVIEW

7.1 This policy will be reviewed every three years or sooner whenever there are changes to legislation, good practice, or other learning.

7.2 Clear and concise information is published about our service and the standards that can be expected.

8 LEGISLATION

- Matrimonial Causes Act 1974
- Housing Act 1988
- Family Law Act 1996
- Civil Partnership Act 2004
- Equality Act 2010
- Localism Act 2011
- Data Protection Act 2018

9 EQUALITY AND DIVERSITY IMPLICATIONS

9.1 We are committed to ensuring and promoting equality of opportunity for all. We are opposed to discrimination on any grounds, including race, religion, gender, marital status, sexual orientation, disability, age, or any unjustifiable criteria. We are committed to developing a culture that values people from all sections of society and the contribution which everyone can make. We will ensure our approach to accessing properties is considerate to people's individual needs. We also adhere to the Equality Act 2010.

9.2 We recognise that some people experience disadvantages due to the socio-economic circumstances and will strive to ensure no person or groups of persons is treated with injustice due to their personal circumstances. EPIC Housing will also ensure that all services and actions are delivered within the context of current Human Rights legislation and will make sure the central principles of the Human Rights Act (1998) will be adhered to.

9.3 An Equality Impact Assessment has been completed to ensure there are no adverse effects resulting from this policy which affect those with protected characteristics.

10 ASSOCIATED DOCUMENTS

- Tenancy Agreement
- Allocations Policy
- Mutual Exchange Procedure
- Tenancy Management Policy
- Equality Diversity and Inclusion Policy

Version Control

Date of Review	Reviewer	Version Number	Changes	Date of Next Review	Approved By
September 2023	Director of Housing Management	2.0	Minor changes to wording	September 2026	Executive Team