

## LHC Assignment Policy



<b>Reference:</b>	Version 2	<b>Author:</b>	Sue Needham
<b>Scope:</b>	Loddon Homes Berry Brook Homes	<b>Approved by:</b>	Holly Messenger
<b>Legislation:</b>	Housing Act 1985 Housing Act 1988 Localism Act 2011	<b>Date of approval:</b>	November 2019
<b>Regulatory/ Governance:</b>	The regulator for social housing Tenancy standard	<b>Date of next review:</b>	November 2022
<b>Related Policies:</b>	Tenancy policy Succession policy Mutual exchange policy Sole & joint tenancies policy		

### 1. Policy Statement

- 1.1. This policy applies to Loddon Homes and Berry Brook Homes which collectively will be referred to as the Local Housing Companies (the LHC).
- 1.2. The purpose of this policy is to ensure the LHC fulfil their statutory and contractual obligations for the assignment of assured and fixed term tenancies.
- 1.3. The LHC delegates responsibility for the delivery of this policy to Wokingham Borough Council (WBC) Tenancy Services.

### 2. Scope

- 2.1. This policy applies to all residents who hold an assured or fixed term tenancy where there is a specific clause in the tenancy agreement that provides for assignment. This is the LHC's contractual obligation to allow an assignment.

### 3. Definitions

- 3.1. An assignment is a transfer of the tenancy (usually by deed) during the life of the tenant.
- 3.2. Under an assignment, the person who transfers the tenancy (i.e. person A) is called the 'assignor' and the person to whom the tenancy is transferred (i.e. person B) is

called the 'assignee'. The assignee must be aged 18 or over.

#### **4. Roles & responsibilities**

- 4.1. WBC Tenancy Services are responsible for responding to all requests made by residents to assign their tenancy.
- 4.2. The Housing Managers are responsible for providing guidance and support to the Housing Officers in delivering this policy and signing off applications by residents to assign their tenancies.
- 4.3. The Senior Specialist Housing Manager has overall responsibility to ensure that this policy is implemented.

#### **5. Legislation**

- 5.1. 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.
- 5.2. Where there is an agreement by a landlord that the tenant can assign with permission, then permission should not be unreasonably withheld. If there is no agreement and the consent to assign is refused, there is no need for a reason to be given by the landlord.
- 5.3. S158-162 of the Localism Act outlines the rights of Assured Shorthold tenancies on fixed terms of more than 2 years.

#### **6. Contractual and statutory obligations**

6.1. The LHC must consider assignments by:

- Mutual exchange (see Mutual Exchange policy and procedure).
- Assignment to an eligible successor (see Succession policy and procedure and Section 7 below).
- Assignment by Court order e.g. Property Adjustment Order-(see Tenancy policy)

6.2 The only situations in which it is possible for a tenant to assign their secure/assured tenancy are:

- By way of a mutual exchange of tenancies strictly in accordance with Section 92 of the Housing Act 1985 and S17 of the Housing Act 1988
- Where a tenant is ordered to assign the tenancy by virtue of an order made by the County Court in proceedings under the Family Law Act 1996.
- To a person who would be eligible to succeed to the tenancy if the actual tenant had died immediately before the assignment. (See 6.10 below).

**If these are included specifically in the resident's tenancy agreement.**

6.2 The right to assign, or mutually exchange, a tenancy, as detailed above, only applies to assured and fixed term tenants. It does not apply to assured shorthold tenancies.

6.3 A tenancy can only be assigned to a person eligible to succeed the tenancy once, so once it has been assigned, it cannot be assigned again, nor can there be a later succession. However this does not limit assignment by mutual exchange, or court order.

#### 6.4 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. As they are acting in agreement, the joint tenants do not need to serve notice to quit; they both sign the relevant deed of assignment.

#### 6.5 Sole tenants

A sole tenant could request to assign their tenancy to someone who would have the right to succeed to their tenancy on the event of their death. The reasons for requesting this assignment will be explored before the LHC confirms agreement or refusal of consent.

#### 6.6 Grounds for Refusing an Assignment

There are no statutory grounds for refusal. However, the Regulatory Framework requires the LHC to make the best use of its housing stock to meet local needs; therefore the matters detailed below should be considered as grounds for refusal.

Furthermore if the proposed assignee qualifies for succession, they will have the potential to become the tenant at a later stage and the LHC would need to be satisfied that there is a requirement for the tenancy to be assigned at this stage.

The following are grounds where an assignment can be refused where:

- the tenant is a starter tenant, a licensee or an assured shorthold tenant.
- there is a possession order in force against the tenancy.
- there is a valid Notice served for any breach of tenancy conditions.
- there are rent arrears above any discretionary limit set by the Rental Income Team.
- the person being assigned the tenancy is evidenced to have committed harassment or domestic abuse against the tenant.
- the tenant sublets part of their home or takes in a lodger; without previous written consent.
- the assignment will result in under occupation.
- the property is a specialised/adapted unit and the proposed assignee does not meet the criteria for this particular type of property. In such circumstances the officer will need to arrange for an assessment of the assignor's needs to be carried out

#### **6.7 Household members with a greater claim to the tenancy**

There may be other people in occupation that would have greater claims to the tenancy if the tenant were to die. They must also sign the form to agree that the proposed assignee obtains the tenancy. For example an elderly tenant may wish to assign to her son even if her spouse were in residence, or lived elsewhere, the spouse should, if practicable, sign to agree to the tenancy being assigned to the son.

### **6.8 Assignment & Mutual Exchanges** (see Mutual Exchange policy and procedure)

A mutual exchange is an assignment where the two parties swap tenancies. This applies to swapping tenancies where no secure or assured tenancy commenced on or before 1 April 2012. A deed of assignment is signed and the incoming tenant has a new file set up which will include the previous tenant's tenancy agreement.

### **6.9 Assignments following relationship breakdown**

Tenants should be encouraged to seek a Property Adjustment Order as part of a divorce settlement or an order through the Family Law Act 1996.

The order must be appended to the original tenancy agreement and changes made to Northgate. A deed of assignment does not need to be signed.

### **6.10 Assignment and succession** (refer to the Succession policy and procedure)

6.10.1 In certain circumstances, tenants may have a right to assign their tenancy to another person before the event of their death with the LHC's consent and only if there is specific clause in their tenancy agreement. There can be only one assignment by law and that can only be made to a person that would qualify as a successor to the tenancy after the death of the tenant.

6.10.2 A tenant(s) who requests to assign their interest in their tenancy to another person must not already be a successor. If the tenancy has been succeeded to then it cannot be assigned.

## **7.0 Implications of assignment**

7.1 In these cases assignment is given a special meaning and includes the following:

- The assignee will succeed to the tenancy and cannot assign the tenancy again other than by mutual exchange. There can therefore be no further succession rights.
- If the tenancy is in joint names and becomes a sole tenancy, then the sole tenant will be an assignee and will succeed to the tenancy which cannot be assigned again other than by mutual exchange; neither can the tenancy be succeeded to again.
- Where the tenancy is assigned in accordance with an order under the Family Law Act 1996 the assignee will be granted a new secure/assured tenancy, but if the tenancy has previously been succeeded to the assignee will also be a successor and cannot assign the tenancy again other than by mutual exchange; neither can the tenancy be succeeded to again.
- Where the assignment is by way of mutual exchange the assignee will remain a successor if they had previously succeeded to the tenancy.

7.2 When the assignee takes over the tenancy he/she is not a new tenant and must not sign a Tenancy Agreement. A Deed of Assignment must be signed for each property and retained on the assignee's and assignor's files.

The following should be noted when a tenancy is assigned:

- If the assignment is in pursuance of a Court Order made under Family Law Act 1996 the tenant is a successor only if the other party to the marriage was a successor.
- If the assignment was by way of exchange (mutual exchange) then the tenant is a successor only if the tenant was already a successor.

- If the tenant is no longer in occupation and therefore no longer a secure/assured tenant, anyone else in residence is an unlawful occupant. However, if such person(s) meet the legal conditions for succession they may be granted the tenancy.
- If the tenant is no longer in occupation and occupants do not meet succession conditions, the occupants are unlawful occupants.

7.3 Action to repossess a property is likely to be necessary in two situations:

- When someone who does not qualify to have the tenancy assigned to them refuses to leave.
- When an assignment of a secure or assured tenancy has been granted but Ground 13 of the Housing Act 1985 or Ground 9 of schedule 2 of the Housing Act 1988 applies respectively. This covers especially adapted properties. The landlord must establish that the person(s) requiring the adaptations no longer reside(s) in the property and that the property is required to meet the needs of another person or family with special needs. The action must be proved as reasonable and an offer of alternative accommodation suitable to the occupants needs must be made.

7.4 Where no assignment is possible, even if a Deed of Assignment has been signed, the current tenant remains the tenant of the LHC, and is responsible for all aspects of the tenancy until vacant possession is gained. If the tenant has moved out leaving the 'assignee' in occupation then a Notice to Quit may be served. Refer to 7.6 of the Mutual Exchange policy.

## 8. Equality & Diversity

8.1 The LHC recognises the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. The LHC works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. The LHC will record, analyse and monitor information on ethnicity, vulnerability and disability.

## 9. Confidentiality

9.1 Under the Data Protection Act 2018 and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

9.2 The LHC's employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

## 10. Review

10.1 This policy will be reviewed on a three yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or

changes in other relevant the LBC policies.

## **11. Performance**

- 11.1 Performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to associated boards.

## **12. Appendices**

None

APPROVED