



**City of London Housing Service**

**Tenancy Policy**

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<b>Approved by:</b>	Housing Management and Almshouses Sub-Committee
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## **1. Equal opportunities**

The City of London Corporation operates an Equality & Diversity policy and this applies to all aspects of its services. We will ensure that no resident or service user is treated less favourably on the grounds of age, race, religion or belief, disability, sex, gender reassignment, sexual orientation, pregnancy or maternity, marriage or civil partnership status. This policy and all related information can be made available in different formats and translated upon request.

## **2. Aims**

We are committed to providing excellent services that meet agreed service standards. The aim of this policy is: to set out the approach that we will take when issuing new tenancies to existing tenants or occupants and when undertaking changes to an existing tenancy.

## **3. Legislative and regulatory framework**

The Housing Act 1985, 1988, 1996 as amended  
The Landlord and Tenant Act 1985  
The Housing & Planning Act 2016 (further regulations pending)  
The City of London Housing Service Tenancy Agreement  
The Localism Act 2011

## **4. Related Policies and Strategies**

City of London Decant Policy  
City of London Housing Allocation Policy  
City of London Social Housing Tenancy Fraud – Anti-Fraud & Prosecution Policy  
City of London Tenancy Strategy

## **5. Scope of the policy**

The policy applies to current tenants, occupants and prospective tenants of residential properties owned and managed by the City of London Corporation on our social housing estates.

## **6. Introduction**

Tenancies will be issued to eligible people in accordance with the City's Housing Allocation Policy requirements and priorities. This policy applies to changes to existing tenancies. The tenancy changes covered by this policy are:

- Ending a Sole tenancy
- Creating a joint tenancy
- Ending a joint tenancy
- Succession - where an existing tenant has died and the tenancy is 'passed' to another individual

- Assignment – where an existing tenancy is ‘passed’ by the tenant to another individual
- Mutual Exchange
- Name Changes relating to an existing tenancy
- Moving Home

This policy is supported by Estate Management Procedures which detail the actions that officers will take and includes the documentation that officers will issue.

## **7. Types of Tenancy**

### **Sole Tenancy**

A sole tenancy is where only one person is named on the tenancy agreement. They are the only legal tenant even though other people may live in the property with them. A sole tenant is responsible for all aspects of the tenancy.

### **Joint Tenancy**

A joint tenancy is where two people are named on the tenancy agreement. They are ‘jointly and severally liable’, meaning both tenants are responsible for all aspects of the tenancy.

All of the following types of tenancy may be sole or joint tenancies.

### **Introductory Tenancy**

As first agreed by the Community Committee in 1996 and confirmed again in 2002, the majority of new tenants will be introductory tenants for the first year of their tenancy. All introductory tenants will receive a tenancy agreement setting out the introductory tenancy period and terms and the type of tenancy that it will convert to (e.g. secure or secure flexible) subject to the compliance with the tenancy terms during the introductory tenancy period.

### **Secure Tenancy**

Secure tenancies are lifetime tenancies with the right of one succession to the tenancy. To date, these are the types of tenancy that have been issued by the City of London Corporation.

### **Secure Flexible (Fixed Term Tenancy)**

Secure Flexible (Fixed Term Tenancy) are a form of tenancy that gives tenants the right to live in a property for a certain amount of time. They are therefore not ‘lifetime’ tenancies; however, they may be renewed or extended at the discretion of the landlord.

At the time of writing, the City has the option, but is not obligated to issue Fixed Term Tenancies and our policy is to continue to issue Secure Tenancies where appropriate. In certain circumstances, in accordance with the City’s Tenancy Strategy, Fixed Term Tenancies may be offered. This policy will be updated should the situation change.

## **8. Preventing Fraud**

In every tenancy change outlined in this document, our staff will take all reasonable steps to confirm identities and prevent fraud. The actions to be taken will include, but are not limited to:

- Requiring up-to-date identity documents and proof of address – including checking current passport, driving license, utility bills, council tax bills and any immigration or leave to remain documents.
- Undertaking a credit check to both ascertain links to the property and verify the information provided by the applicant. This may also identify where another property may be owned or occupied by the applicant, tenant or successor that may mean they are ineligible for the City of London property.
- Taking a photograph of the tenant(s).
- In any cases where an immigration concern is identified or suspected, these will be referred to the City's Anti-Fraud Team who will undertake further checks with the Home Office.
- In any cases where Fraud is identified or suspected, these will be referred to the City's Anti-Fraud Team for consideration of formal investigation.
- The City may undertake or participate in data-matching exercises designed to detect and prevent fraud, this includes the National Fraud Initiative (NFI).

## **9. Ending a Sole Tenancy**

Sole tenants may end their tenancy at any point if they wish to. To end a tenancy, the tenant must write to the City and give 28 days of notice and the tenancy must end on a Sunday.

In certain circumstances tenancies must be ended, for example if the tenant will not be able to occupy the property for a significant period of time, such as those who move abroad or those who must serve a prison sentence. In such circumstances, if the tenant does not end their tenancy, the City will take the appropriate legal steps to end the tenancy.

## **10. Creating a Joint Tenancy**

A tenancy is capable of being placed in the names of more than one individual, which is referred to as a joint tenancy. The tenancy agreement is the same for joint tenants as it is for sole tenants and each tenant must sign the agreement.

Joint tenants have equal rights of occupation of the dwelling and can only be excluded or evicted from the property by a Court Order. Each joint tenant is 'jointly and severally liable', meaning both tenants are equally responsible for meeting all obligations of the tenancy including paying the rent. On the death of one joint tenant, the tenancy automatically continues for the surviving joint tenant.

Where a joint application was submitted for housing, a joint tenancy will be issued at the point of a new letting. If the application for housing was made in one person's name, a sole tenancy will be issued.

The City policy is to only create joint tenancies between couples. This is because inter-generational or family tenancies may lead to future conflict when lifestyles and needs change.

There is no legal right to add another tenant onto a tenancy. Where a request is received to create a joint tenancy, the City will consider the request carefully. Both parties to the proposed joint tenancy will be interviewed separately to ensure both parties are equally willing to enter into the joint tenancy.

For a joint tenancy to be created, the following conditions are required to be met:

- The current tenant must not be the subject of any legal action relating to the property including possession proceedings or a possession order whether it is final, suspended or postponed.
- The proposed new tenant must be eligible, have the necessary immigration status, for example 'access to public funds' or 'leave to remain in the United Kingdom'.
- Any rent arrears or other debts owed to the City of London Corporation must be paid before the process may take place.

Any sole tenant should fully investigate all the advantages and disadvantages and is advised to seek independent legal advice before deciding to make a request for another person to be added to a tenancy. Some things to bear in mind include:

(1) that each joint tenant is equal, and it makes no difference that one of them was a sole tenant of the property before the joint tenancy was created.

(2) That creating a joint tenancy can affect any (if any) succession rights.

(3) That either joint tenant can end the whole of the joint tenancy by giving a Notice to Quit to the landlord, they do not need the consent or agreement of the other joint tenant to do this and this can mean that the joint tenant not ending the tenancy could lose their home.

(4) That whilst it is very easy to create a joint tenancy, a joint tenancy part of a joint tenancy can only be ended by a Court Order or on the death of a joint tenant.

## **11. Ending a Joint Tenancy**

Either joint tenant can (acting on their own) end the whole of the joint tenancy by giving a valid notice to quit to the landlord. If this happens all parties will probably have to move out of the home.

Unless a joint tenant dies it is only possible for a joint tenant to be removed from a joint tenancy by a Court Order. The Corporation cannot obtain such a Court Order; it is up to the party wanting to be removed (or wanting another to be removed) to seek their own legal advice. This means that even if a joint tenant moves out, they are still liable for the rent and other tenancy matters in just the same manner as if they had continued to live there. They will still be classed as having a tenancy of social housing, so may not be able to obtain another social housing tenancy elsewhere, and would also have the legal right to move back in.

In cases of domestic abuse or other criminal behaviour being caused by one joint tenant against the other, and the victim wishes for the other joint tenant to leave the home, we will refer them to agencies who can assist them to obtain the necessary legal advice and take the necessary action to obtain a Court Order. Please refer to the *Domestic Abuse Policy* for more details.

## **12. Succession**

Each secure or introductory tenancy has one statutory right to assign or one succession right.

### **Tenancies that Started Prior to 1st April 2012**

For all secure tenancies granted prior to 1st April 2012, upon the death of a tenant, the following people would have the right to succeed to the tenancy (in order of priority):

- The deceased tenant's joint tenant;
- The deceased tenant's spouse or civil partner provided they were residing with the deceased tenant at the time of their death as their main home, or
- A member of the deceased tenant's family who had been residing with the deceased tenant for a minimum of twelve months prior to the tenant's death as their main home. Family members are defined as; parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces and partner.

The law does not allow for joint succession, so if there are a number of potential successors, they must decide between them who will take over the tenancy. If they cannot agree, they should seek legal advice and the courts may confirm the successor if necessary.

### **Tenancies that Started on or After 1st April 2012**

For all new tenancies granted on or after 1 April 2012 the law allows one statutory succession to a spouse or civil partner of the deceased tenant, who was living in the property as their main home at the time of the tenant's death. A person that was living with the tenant as their husband or wife will be treated as their spouse and a person who was living with the tenant as if they were civil partners will be treated as the tenant's civil partner. The statutory right of succession of a member of the family has been removed.

Government regulations are currently being drafted which are expected to require all successions to be treated as per 'Tenancies that Started On or After 1st April 2012'. This policy will be updated should the situation change.

### **Under 18**

Those under the age of 18 can succeed to a tenancy. In such cases, a trustee would need to be agreed to hold the tenancy in trust for the child. The trustee is not a guarantor and is not liable for the rent.

### **Under-occupation**

The right of succession is linked to the tenancy rather than the property. If the successor is a family member (i.e. not the deceased tenant's spouse or registered

civil partner), and the property that was occupied by the deceased tenant is larger than their needs (defined in accordance with the City's Housing Allocation Policy) then the successor will be offered one reasonable offer of suitable alternative accommodation.

If the successor chooses not to move into the suitable accommodation, appropriate legal action will be taken where necessary.

### **Property adapted for disabled use**

The right of succession is linked to the tenancy rather than the property. If the successor is a family member (i.e. not the deceased tenant's spouse or registered civil partner), and the property that was occupied by the deceased tenant has been designed or adapted for the needs of a disabled person and the successor has no such requirements, the successor will be offered one reasonable offer of suitable alternative accommodation.

If the successor chooses not to move into the suitable accommodation, appropriate legal action will be taken where necessary.

### **No Right of Succession – Move On**

Where the right of assignment or succession has been used, and there are occupants remaining in a property after the death of a tenant, the City will confirm the situation and offer advice and support to assist them to move on. The City should seek possession of the home within a reasonable time frame, but not allow more than six months to pass.

### **No Right of Succession – Discretionary Succession**

In exceptional circumstances, the City may offer a 'Discretionary Succession'. This is where there is no remaining right of succession, but an occupant would be entitled to succeed if there were a remaining right. In this instance, they would be offered a tenancy agreement. This will only apply where the occupant meets all requirements for high priority in accordance with the City's Allocation Policy.

## **13. Assignment**

A tenant may assign their tenancy to another, this means they transfer their 'interest' in the property to this person. The tenancy continues and the tenancy terms and conditions do not change, a new tenancy does not commence but the tenant changes.

There are three situations when a City of London secure tenancy may be assigned:

- Assignment to a Potential Successor
- Assignment by Court Order
- Mutual Exchange.

### **Assignment to a Potential Successor**

An assignment to a potential successor is to a person who would be qualified to succeed the tenancy if the tenant died. If the tenancy is assigned, the right to statutory succession is used and there is no further right of succession.

The tenant wishing to assign must not be a statutory successor or have become a sole tenant upon the death of a joint tenant or have become a tenant by an assignment. In this circumstance only a sole tenancy can be assigned and it can only be assigned to a sole person. A sole tenant cannot assign a sole tenancy to two people as a joint tenancy. In effect the assignee becomes a successor and there can be no further succession.

The person assigning the property must not remain in the property after the assignment and must not be transferring to another City of London property.

A number of checks will be made before the assignment may proceed; these include but are not limited to:

- Whether the property will be under-occupied or overcrowded after the assignation.
- Whether the property has adaptations which the proposed new tenant has no need for.
- The current tenant or assignee must not be the subject of any legal action relating to the property, including possession proceedings or a possession order whether it is final, suspended or postponed.
- The proposed new tenant must be eligible, have the necessary immigration status for 'access for public funds'.
- Any rent arrears or other debts owed to the City of London Corporation must be paid before the assignation could take place.

The officer managing the case will also undertake identity and fraud checks, and require appropriate documentation from both the tenant and the assignee in order to process the change.

The officer managing the case will explain the legal situation carefully to ensure both the current tenant and assignee fully understand the legal rights and responsibilities involved.

### **Assignment by Court Order**

A tenancy can be assigned by Court Order in a number of circumstances, including family law or relationship breakdown.

Where a Court Order is received, the assignment decreed by the court must be accepted by the City of London, no assessment of the suitability of the property may be carried out. The signing of the Deed of Assignment is not required as the Court Order itself implements the assignment. The date of assignment is effective from the date specified by the court.

## **14. Mutual Exchange**

Existing City of London tenants can register for a mutual exchange as a means of gaining suitable housing. Mutual exchanges can only occur between those with appropriate tenancies e.g. assured or secure. The tenants are responsible for finding

the exchange partner and the property that they would like to exchange with. The following conditions must also be met to ensure the exchange may proceed:

- There must be no rent arrears, outstanding repairs charges or possession orders on file.
- There must be no existing tenancy management issues such as anti-social behaviour.
- The incoming tenant must accept the current condition of the property, subject to safety checks such as gas safety.

## **15. Name Change**

We accept that an existing tenant may wish to change their name, for example if they have married or for religious reasons. Where we receive a request to change a name, we will endeavour to meet the request.

We will require supporting evidence such as a deed poll or marriage certificate to effect the name change, and we will undertake checks to confirm identity and prevent fraud.

We will not alter the original tenancy documentation, however, we will provide a letter confirming the recognition of the name change, and we will make amendments to our Housing Management System to ensure items such as letters are addressed appropriately.

## **16. Moving Home**

### **Management Transfers**

A management transfer occurs in situations where a tenant has an immediate need to move from their current property. Management transfers are carried out in accordance with the City's Allocation Policy. We will ensure that no tenant gains or loses tenancy rights if they need to move.

### **Decants**

A 'decant' is the term used where a tenant is required to move from their current property. This may be due to redevelopment or major works. The City has a Decant Policy which sets out the steps that will be taken and support that will be provided.

### **Downsizing**

Tenants may apply to move to a smaller home, and we provide a financial incentive to do so. Downsizing is carried out in accordance with the City's Allocation Policy. We will ensure that no tenant gains or loses tenancy rights if they need to move.

## **17. Right to Appeal**

If current tenants, occupants or prospective tenants disagree with the decision made by the Estate Manager, they have the right to appeal the decision. The reasons for the appeal must be provided in writing to the Area Manager. The Area

Manager will make the decision, and the decision and reasons for the decision will be provided in writing to the relevant parties.

### **18. Policy Exceptions**

In exceptional circumstances, the City of London Corporation may consider variations to this policy. The variation will depend upon the individual situation, any extenuating circumstances and the evidence available. The decision and reasons for the decision will be provided in writing to the relevant parties.

### **19. Monitoring the policy**

The Estate Managers are responsible for enacting the tenancy changes within this policy. The Area Housing Managers will monitor the tenancy changes that take place on the estates in each of the areas they are responsible for, to ensure this policy is being implemented consistently and fairly.

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