

Tenancy Changes Policy

Linked strategies	Transforming Our Future
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Policy Owner	Head of Housing & Support Services



1 Policy Statement

- 1.1 This policy sets out our approach to managing changes to our tenancy agreements in accordance with legislative and regulatory requirements. We recognise the importance of ensuring that our customers understand what the various changes of tenancy mean to them and understand the responsibilities they are taking on.

2 Scope

- 2.1 This policy applies to any customer of a home owned or managed by Greatwell Homes, who wants to make changes to their tenancy.
- 2.2 This policy applies to a sole tenancy, joint tenancy, succession and assignment of a tenancy but does not relate to mutual exchanges which are dealt with separately in the mutual exchange policy. A brief outline of the definitions of these types of tenancy change are listed in the definitions section below.

3 Definition

- 3.1 Definitions of Sole Tenancies, Joint Tenancies, Assignments, Mutual Exchanges, and Successions are provided below:

3.2 Sole tenancy:

- 3.2.1 Where one person has legal responsibility for a tenancy.



3.3 **Joint tenancy:**

3.3.1 defined as one tenancy held by two or more persons, with each tenant being jointly and individually responsible for keeping to the obligations set out in the tenancy agreement. If one person in a joint tenancy serves notice to terminate the tenancy, then in some circumstances the tenancy as a whole is ended, depending on the type of tenure.

3.4 **Assignments:**

3.4.1 These occur when a tenant gives their interest in a tenancy to another person. The tenancy of the property then continues on the same basis and the new tenant takes on all the rights and responsibilities of the original tenancy.

3.5 **Mutual exchanges:**

3.5.1 Direct swapping or exchange of properties which are arranged by tenants themselves, see separate Mutual Exchange policy for more information.

3.6 **Succession:**

3.6.1 This is when a tenant dies and their tenancy passes to another qualifying person. Succession rights are clearly laid down in legislation and vary depending on the relationship of the applicant to the deceased tenant and the type of tenancy that was held. There can be only one statutory succession. Our tenancy agreements clearly set out the contractual and statutory succession rights which apply.

4 **Policy Principles**

4.1 The principles of this policy are:

- To comply with regulatory and legislative requirements



- To ensure our customers understand the implications of the various types of tenancy changes
- To set out clear expectations for customers;
- To ensure the policy makes the best use of our housing stock.

5 Tenancy Changes

5.1 Change of name

5.1.1 Where a customer who is a current tenant has changed their name, we will recognise the change and update our records accordingly upon receipt of recognised legal documentation. This will not count as a succession.

5.2 Termination of Tenancy by the Tenant

Periodic Tenancies

5.2.1 A customer who wishes to end their tenancy must serve a written Notice to Quit (NTQ) giving a minimum of 28 days' notice, which is effective once the Notice is received by us. The NTQ must expire on the first or last day of a period of the tenancy. We have a standard NTQ form our customers can use for this purpose and we will let customers know where a valid NTQ has not been given.

5.2.2 If the tenancy is a joint tenancy, we encourage all customers who are included on the tenancy to sign the NTQ. However, if only one party to the tenancy signs the NTQ, it shall remain valid and will terminate the tenancy whether or not the other party(ies) is/are aware.



Fixed Term Tenancies

5.2.3 If the tenancy is for a fixed term and a customer wishes to end their tenancy before the end of the fixed term they may do so by offering to surrender the tenancy giving at least four weeks' notice. We will not unreasonably refuse to accept an offer to surrender. In the case of joint tenants all parties should agree to the surrender, however if one party submits the surrender then this will be accepted as notice period for the tenancy to come to an end.

5.3 **Surrender of tenancy**

5.3.1 All parties can end a tenancy at any time with or without notice if there is clear agreement. It is not lawful for Greatwell Homes to accept an offer of surrender if that offer is given by only one party to a joint tenancy.

5.3.2 Surrender can only take place where the customer offers to give up the tenancy of their property. It is preferable to have this in writing in the form of a Notice of Surrender however, it may be an unequivocal act of surrender e.g. handing in the keys to the property. Where we agree to accept a surrender, we will prepare a Notice of Surrender for all parties to sign.

5.3.3 If the keys are returned without NTQ or surrender documents signed, we will charge four weeks rent in lieu of notice.

5.4 **Abandonment**

5.4.1 Where a property has been abandoned by the lawful tenant(s) and is not occupied, we will seek to recover possession as soon as possible. Where there



is a suspicion of abandonment we will serve a Notice to Quit at the property.

5.4.2 On expiry of the NTQ if there is thorough and conclusive evidence that the property is unoccupied, we will arrange to change the locks and take possession of the property. If there is any uncertainty on an Intention to Return to the property, we will seek a Possession Order from the County Court.

5.5 **Unauthorised Occupation**

5.5.1 If a property is no longer the customer's only or principal home the tenancy loses security of tenure and may be terminated by a Notice to Quit served by us. We will then require any remaining occupier(s) to leave and will seek possession through court action as necessary. Where possible the unauthorised occupier(s) will be named as a defendant in the possession proceedings so that we can seek damages for use and occupation after the Notice to Quit expires.

5.5.2 If the customer has unlawfully sublet part or the whole of the property, their tenancy loses its assured status, and this can never be regained even if the tenant moves back into the property. The tenant may also be committing an offence under the Prevention of Social Housing Fraud Act 2013.

5.6 **Relationship Breakdown**

5.6.1 We advise any couples who are permanently separating to seek independent legal advice in relation to tenancy issues.

5.6.2 Customers who are going through a relationship breakdown need to tell us about the following:



- Details of who is living in the property;
- What each customer who is party to the tenancy wants to happen to their home;
- Whether they both agree;
- Whether they are married, in a civil partnership or co-habiting;
- Whether there are any children living permanently at the property;
- Whether any member of the household is in receipt of any benefits;
- Whether any domestic abuse or violence has occurred.

5.6.3 What we can do depends on the following:

- The name(s) on the tenancy;
- The type of tenancy; and
- Whether there has been any previous assignment or succession.

5.6.4 If customers are having difficulty coming to an agreement about their tenancy they may be able to apply to Court for a decision. Citizens' Advice may be able to provide more information about this.

5.6.5 In the case of married couples any matrimonial occupation rights would apply whether or not the tenancy was held in both spouses' names.

5.6.6 The County Court has the power to exclude a joint tenant from the home under the Family Law Act 1996. The Court may also transfer a tenancy to the former spouse or co-habitee of a tenant. It will not be necessary to deal with this by way of a Deed of Assignment. In such cases we will require to be served with the notice of application to the Court and would have the opportunity to make representations. In order to action the change we would need to see the final court order.



5.6.7 The Family Law Act 1996 provides that occupation of the matrimonial home by a spouse/civil partner of the tenant is a right and counts as occupation by the tenant. Therefore, if a married/civil partnership couple separate and the tenancy is held in only one of their names, the spouse/civil partner will be allowed to remain in the home for as long as the tenancy continues i.e. until ended legally by the tenant or by us.

5.7 Assignment

5.7.1 We will not allow the subletting of the whole of the property to another person in any circumstances.

5.7.2 We will allow assignments (transfers) to another person in accordance with this policy or if there is a transfer order made by the Court under the Matrimonial Causes Act 1973, the Children Act 1989 or the Family Law Act 1996, or we have given our written consent for a mutual exchange.

5.7.3 In relation to requests for an exchange please refer to our Mutual Exchange Policy.

5.7.4 The Greatwell Homes tenancy agreement permits assignments to another person who would be qualified to succeed to the tenancy. All such transfers must be undertaken by a Deed of Assignment. This right is limited, and the customer should contact us to check whether the person they propose transferring their tenancy to meets the qualification criteria. Only one assignment or succession is permitted.

5.7.5 Reasons why we may refuse a request include, but are not limited to:

- Where there has already been a previous assignment or a succession



(including succession by a surviving joint tenant) unless there is a Court Order directing us to do so.

- Where there are outstanding rent arrears or other debts owed to us;
- Where legal proceedings of any kind have been initiated against the customer or there are other tenancy breaches;
- Where the applicant has no recourse to public funds or no right to remain in the country;
- Where the applicant would not qualify to join the housing register, for example, if they already hold an assured tenancy, own a property elsewhere, or they do not meet the financial criteria;
- Where there is a Court Order for possession of the existing customer's home;
- Where there is reason to believe that one of the parties is being pressurised into changing the tenancy;
- Where we have reason to believe the applicant is not resident;
- Where the property is not suitable from an access perspective for the occupants of the property, for example if a number disabled adaptations are required to meet the requirements of the occupants it may be advised that alternative, more suitable accommodation is sought.
- Where the tenancy is in a probationary period

5.7.6 If we agree to change the named tenants on a tenancy agreement, this will be done by way of assignment for changes from joint to sole tenancy requests and will count as a succession.

5.8 Requests for Joint tenancies

5.8.1 We will only consider joint tenancies for spouses, civil partners and partners.

5.8.2 For customers who hold Assured tenancies, requests for joint tenancies will be



dealt with by deed of surrender and the granting of a new joint tenancy in accordance with our Tenure Policy. Unless a spouse or civil partner, the applicant requesting to be added to the tenancy will need to prove that they have been resident for a minimum of 12 months.

5.8.3 We will not accept requests from customers who hold a fixed term tenancy during the period of the fixed term. We will consider requests at the end of the term if the intention is to grant a new fixed term tenancy.

5.8.4 We may refuse an application for a joint tenancy if any of the points in 5.75 apply.

5.9 Payment of Rent and Use and Occupation charges

5.9.1 If a tenancy is held in the name of one person they will be responsible for any rent arrears. If a tenancy is held in joint names, all customers who are tenants are jointly responsible for any arrears or debts owed to us.

5.9.2 In the event that the change in names on the tenancy agreement is the result of a Court order then any arrears will be the responsibility of joint tenants.

5.9.3 There may be instances when a Court will decide who is responsible for outstanding arrears i.e. in matrimonial cases. We will abide by the ruling of the Court Judgment.

5.9.4 In cases where we allow continued occupation after termination of the tenancy use and occupation charges will be levied. As part of the process we will require the occupant to sign a Use and Occupation Agreement in these cases. Failure to pay the charges set will result in possession action.

5.9.5 In these cases we will require the occupant to sign a use and occupation agreement.



5.10 Death of a Tenant

5.10.1 A tenancy does not automatically end with the death of a tenant. If there is no statutory succession the tenancy will become part of the deceased customer's estate.

5.10.2 A Notice to Quit will be served by us on the Personal Representatives of the deceased tenant. Such an NTQ will be served at the property and where applicable on the Public Trustee's office, unless there has been a formal Grant of Probate/Letters of Administration obtained by Executors/Administrators in which case the NTQ will be served on them.

5.10.3 If someone who is not entitled to succeed occupies the property, proceedings for possession will be taken after serving a Notice to Quit. If the property remains occupied on expiry of the Notice to Quit, we will issue legal proceedings and obtain an order for possession that would be enforced by a warrant for possession if necessary.

5.10.4 We will seek to recover any debts owed to us from the deceased customer's estate (subject to the funds being available to pay the debt).

5.11 Succession following death of a Tenant

Survivorship by a joint tenant

5.11.1 Where a joint tenant passes away and is survived by another joint tenant, we will recognise that the surviving joint tenant has succeeded to the tenancy, with automatic and immediate effect from the date of death. This will count as a succession.

Statutory succession by a spouse/partner



5.11.2 Where a sole tenant passes away, and the customer had not succeeded to the tenancy after 10th December 2007, we will recognise that the tenancy has of interest with automatic and immediate effect (by virtue of Section 17, Housing Act 1988) in any spouse or civil partner of the tenant who was occupying the property as his or her only or principal home at the time of death. In this instance the tenancy will not pass on to the spouse or civil partner under the tenant's will or intestacy.

5.11.3 We will provide the customer who is to be the new sole tenant with a copy of the existing tenancy agreement.

Contractual succession by a Relative

5.11.4 Where a sole tenant passes away, and that customer had not succeeded to the tenancy since 10th December 2007, and there is no statutory succession by a spouse/partner, some of our existing tenancy agreements state that a Relative may succeed to the tenancy as long as they were living in the property as their only or main home throughout the 12 months before the date of death. Only one person may succeed to the tenancy; if more than one relative wish to succeed, they should agree between themselves but if this is not possible then we will make the decision.

5.11.5 We will not grant relatives contractual succession rights on fixed term tenancies. These rights will be limited to the statutory rights of the spouse or partner.

5.11.6 We will provide the customer who is to be the new tenant with a copy of the existing tenancy agreement and ask them to sign a document confirming that they have succeeded to the tenancy, and that no further successions are permitted.



5.12 Devolvement to another person under the tenants will or intestacy

5.12.1 Where a sole tenant passes away, and their tenancy has devolved to another person under the tenant's will or intestacy, we will recognise that this person has succeeded to the tenancy provided that the formalities for transferring the tenancy from the deceased tenant to them have been completed. The decision on whether the succession is permitted will rest upon the type of tenancy agreement in place, and whether the potential successor meets our criteria for succession.

5.12.2 We will provide the customer who will be the new tenant with a copy of the existing tenancy agreement and ask them to sign a document confirming that they have succeeded to the tenancy following the date of death. In these circumstances, if the new tenant did not have a contractual right to succeed to the tenancy, we will consider applying for possession of the property under Ground 7, Schedule 2, Housing Act 1988, clearly stating the grounds for refusal.

6. Implications for Customers

6.1 Customers that are tenants of Greatwell Homes are directly impacted by this policy as they will need to be aware of the implications of any changes they may wish to make to their tenancy.

6.2 Customers also need to be aware of any changes Greatwell Homes can make to tenancies if they become aware of circumstances that require this, including breaches of tenancy conditions.

6.3 Customers being aware of an effective and robust Tenancy Changes Policy will mean that customers are fully aware of what they can and can't do in relation



to tenancy change, and the reasons why.

7. Feedback

7.1 Any complaints arising through this policy will be dealt with in accordance with Greatwell Homes' Complaints and Feedback Policy.

8. Equality Statement

8.1 The Equality Act of 2010 makes it unlawful to discriminate against anyone on grounds of Age, Disability, Gender Reassignment, Race, Religion or Belief, Sex, Sexual Orientation, Marriage & Civil Partnership, Pregnancy & Maternity. Greatwell Homes supports its principles and is committed to the values of equality of opportunity and non-discrimination.

8.2 An Equality Impact Assessment has been carried out in conjunction with this policy and there have been no risks identified by the assessment in relation to Equality. A copy of the Equality Impact Assessment is available upon request.

9. Responsibilities

9.1 The Head of Housing and Support Services will have overall responsibility for this Policy and ensure it is underpinned by effective working procedures. They will also have responsibility for ensuring that staff receive training on the key aspects of housing law to ensure the effective implementation and compliance of this policy.

9.2 Relevant staff within the Neighbourhood Housing team will be responsible for



the day to day implementation of this Policy. Please see table below for further details.

Job Title	Responsibility
Neighbourhood Housing Assistant	Processing paperwork received accurately and updating computer systems and databases accordingly.
Neighbourhood Housing Officer	Ensuring that the correct documentation is supplied and that forms are completed accurately. Also responsible for initial decision making in relation to whether the Tenancy Change can go ahead, consulting with Housing Services Manager if necessary.
Housing Services Manager	Ensuring this policy and associated procedures are adhered to in the decisions made by the Housing Services Team.
Head of Housing and Support Services	Overall responsibility for the policy.



10 Review

10.1 This Policy will be reviewed every three years or in line with changes in legislation, whichever is the sooner, and any updates or recommendations for changes will be presented to Senior Management Team.

Associated Policies	Associated Procedures
Mutual Exchange Policy	Mutual Exchange Procedure
Tenure Policy	Abandonment Procedure
	Income Management Procedure
	Void Procedure

