



Tenancy Changes Policy

Version 3.
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Approved by: Triathlon Homes Policy Panel

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Policy review date: Jan 2016

Policy Review Statement - This policy will be reviewed at the date mentioned above or following legislative, organisational, or changes to good practice if sooner.

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1. Introduction

- 1.1 The aim of this policy to ensure that Triathlon Homes provides accessible information for residents with regards to their statutory and contractual rights on succession, assignment, mutual exchanges and joint tenancies and explains how Triathlon Homes will administer resident's requests for tenancy changes.
- 1.2 This policy applies to all Social Rent and Intermediate Market Rent Tenants. For leaseholders and shared owners (see glossary) only section 4.2.4 applies.
- 1.3 Triathlon Homes LLP ('Triathlon Homes') is the owner of 1,379 homes within East Village and is landlord to the occupiers of these properties and has appointed a Managing Agent to manage the properties on its behalf. Both Triathlon Homes and The Managing Agent are members of the Housing Ombudsman Service.

All of Triathlon Homes' policies are its own, but are implemented by the Managing Agent on its behalf. Triathlon Homes' policies are required to comply with the Regulatory Standards of the Homes and Communities Agency.

2. Policy Statement

- 2.1 Triathlon Homes will work to ensure that all residents are treated fairly and that due regard is given to current legislation, regulation and best practice when dealing with residents requests for a tenancy change.
- 2.2 There are a number of circumstances in which residents may wish to change who holds the tenancy, these include:
 - Death of a tenant;
 - One joint tenant moving out;
 - A sole tenant asking for a partner to be added to the existing tenancy to create a joint tenancy;
 - Changes to a tenancy as a result of court proceedings under the Family Law Act 1996 or Children Act 1989.
- 2.3 We may, in exceptional circumstances, exercise discretion with regards to tenancy changes. We will consider the terms of the relevant tenancy agreement before making any decision.

3. Context

Legislation

- Housing Act 1985.
- Housing Act 1988.
- Civil Partnership Act 2004.
- Family Law Act 1996.

- Matrimonial Causes Act 1973.
- Children Act 1989.
- Equality Act 2010.
- Localism Act 2011

Key links to Triathlon Homes' Policies/Documents

Tenancy Agreements
Relationship Breakdown Policy

4. Method Statement

- 4.1 All requests to change a tenancy need to be made in writing and will require the resident to provide relevant supporting evidence.
- 4.2 We will aim to respond to all requests to make a tenancy change within 10 working days of receipt. Where approved, we will aim to process all tenancy changes within 28 working days; however this may take longer if additional supporting information is required.
- 4.3 All requests to amend a tenancy record will require a tenancy verification and confirmation of household composition visit.

4.4 Succession

4.4.1 Death of a tenant - Rights of succession

- 4.4.1.1 In the event of the death of a tenant, an occupant residing in the same property may have a legal right to succeed (take over) the tenancy depending on their relationship to the tenant and their length of occupation. Succession rights are set out by legislation and may be further defined in each tenancy agreement.
- 4.4.1.2 When the succession occurs, no new tenancy agreement is created as the successor succeeds to the current tenancy and the rights and responsibilities of the previous tenant are inherited automatically, including:
- Responsibility for any existing arrears in certain circumstances (see 4.4.1.4 below);
 - Any legal notices that are in effect; and
 - Maintenance of tenant improvements.
- 4.4.1.3 Only one succession is permitted, if the deceased tenant was themselves a successor no further succession can take place.
- 4.4.1.4 Responsibility for any outstanding arrears of rent will pass to the successor if they were a joint tenant with the deceased as joint tenants are jointly and severally responsible for arrears of rent. If the successor was not a joint tenant then the debt is owed by the deceased tenant's estate and it may be the case that the successor is also the personal representative and beneficiary of the estate as next of kin. If so, he or she is responsible for paying the arrears from the estate. However, if a suspended or postponed possession order is in existence and it is a condition of the order that

the arrears are cleared by instalments, the successor tenant is bound by the order and may be evicted if the instalments are not paid and the arrears cleared.

4.4.1.5 We will seek possession of the property if someone who does not qualify to succeed tries to take over the tenancy.

4.4.1.6 If the property is larger than the needs of those that have succeeded to the tenancy, where we have grounds to gain possession of the property, we will look to exercise these.

4.4.2 Assured periodic tenancy – succession rights

4.4.2.1 This applies to both Social Rent assured periodic tenancies and Intermediate Market Rent assured shorthold periodic tenancies. The following will be qualified to succeed:-

- In the case of a joint tenancy any surviving joint tenant (this is known as survivorship although it does count as a succession and prevents any further succession), but if there are none then;
- Providing the tenant who died was not themselves a successor, their tenancy will pass to their spouse (see glossary), registered civil partner or someone who was living with them as husband or wife. This includes a same sex partner. The Successor must have been living at the property as their only or main home at the time of the tenant's death.

4.4.2.2 The right of succession applies to probationary tenancies. Whilst the tenancy remains an assured short hold (probationary) tenancy, the successor succeeds to the probationary tenancy.

4.4.2.3 We will use Ground 7 of the 1988 Housing Act to obtain possession of the tenancy if no-one residing at the property is qualified to succeed.

4.4.3 Fixed term assured short hold tenancies – succession rights

4.4.3.1 In the case of Social Rent assured shorthold fixed term tenancies the following will be qualified to succeed and the successor succeeds to the remainder of the fixed term of the original tenancy.

- In the case of a joint tenancy any surviving joint tenant, but if there are none then;
- Providing the tenant who died was not themselves a successor, their tenancy will pass to their spouse (see glossary), registered civil partner or someone who was living with them as husband or wife. This includes a same sex partner. The Successor must have been living at the property as their only or main home at the time of the tenant's death

4.4.3.2 In the case of Intermediate Rent assured shorthold fixed term tenancies, as the term of the tenancy is less than 2 years, there is no statutory right to succession.

4.4.3.3 If no one residing at the property is qualified to succeed to the tenancy then we will take legal proceedings to bring the tenancy to an end and regain possession of the property.

4.4.4 Succession and shared owners

- 4.4.4.1 Unless a shared owner has staircased to 100% ownership, a shared ownership lease is also an assured tenancy as long as occupied by the lessee as their principle home. What happens on death will depend on whether the lease/tenancy was in joint or sole names and, if joint, whether the equity has been severed (see glossary).
- 4.4.4.2 We will abide by the directives in the will or intestacy rules regarding inheritance of the estate. Where necessary, we will seek legal advice with regards to administering any changes.
- 4.4.4.3 Triathlon Homes recommends that all shared owners make a will setting out what they wish to happen to their estate in the event of their death.
- 4.4.4.4 We will not re-house any remaining household occupants on the death of a shared owner.
- 4.4.4.5 Any arrears that the shared owner had will pass into their estate and we will work with the executor(s), and/or administrator(s), and/or heir(s) to recover these.

4.4.5 Reasons to refuse a claim to exercise succession rights

- 4.4.5.1 We will refuse a claim to exercise succession rights in the following cases (please note that this list is not exhaustive):
- The deceased tenant had previously succeeded to the tenancy (including a person who was a joint tenant and later became a sole tenant after the other joint tenant died);
 - The deceased sole tenant had been living alone, the spouse / civil partner was not living at the property as their primary home prior to the death of the tenant;
 - Where court proceedings had previously commenced for possession of the property and a possession order had been granted which ended the tenancy; or
 - The applicant asking for succession is unable to prove their relationship to the deceased tenant, or immediately before the tenant's death that they were living at the address as their only or main residence at the time of the tenants' death.

4.5. Exercising discretion where there is no right in law to succeed.

- 4.5.1.1 Where the remaining occupiers have no statutory or contractual rights to succeed to the tenancy then we will require them to provide vacant possession. We will bring the tenancy to an end by notice where there is no recognised tenant in occupation. Where vacant possession is not provided or there is a claim to inherit the tenancy we will take legal proceedings in accordance with the terms of the tenancy agreement unless we exercise landlord's discretion and a new tenancy is granted by Triathlon Homes (see below).
- 4.5.1.2 There may be no rights to succeed in statute or contractually within the terms of the tenancy agreement, but there may be compelling grounds that merit the exercise of discretion and the granting of a new tenancy. All cases will be considered on an individual basis at the sole discretion of Triathlon Homes.

4.5.1.3 Where appropriate, for example, in situations which would mean that the property would be under-occupied or adaptations have been installed that are not required by the person applying to take over the tenancy, we may make an offer of alternative accommodation where we are able to do so rather than grant a new tenancy at the existing property.

4.5.1.4 Where discretion is not exercised in favour of the applicant or they decline our offer of alternative accommodation and they are refusing to leave the property, we will seek possession of the property through the courts.

4.4. Amending tenancies.

4.4.1 Joint to sole tenancies.

4.4.1.1 Triathlon Homes will not change a joint tenancy to a sole tenancy without the agreement / consent of both / all the joint tenants' party to the original tenancy agreement.

4.4.1.2 With our agreement, the joint tenant(s) may issue a Deed of Release. Both parties must sign the Deed the presence of a witness, the witness can be a member of Triathlon Homes Team. Once this has been approved by all parties, the tenancy records are amended to show that the tenancy remains in one name; no new tenancy agreement is issued.

4.4.1.3 Permission for the change of tenancy is subject to Triathlon Homes being satisfied that the request is the desire of both parties, there is no breach of conditions of tenancy or if there is any breach it has been satisfactorily remedied and the rent account is clear.

4.4.1.4 The remaining sole tenant will retain the same status as the previous joint tenants, for example assured tenants will remain assured. For fixed term assured short hold tenants, the sole tenant will have the remainder of the existing term.

4.4.1.5 If Triathlon Homes refuses to accept the Deed of Release (which we are able to do) it would be open to the outgoing tenant to either terminate the tenancy by surrender in the case of a fixed term tenancy or for an assured periodic tenancy by serving a Notice to Quit giving 4 weeks notice in writing of their intention to terminate the tenancy. This would have the effect of bringing the joint tenancy to an end. Triathlon Homes may then either grant a new tenancy, or bring proceedings for possession against the remaining tenant.

4.4.1.6 It is also possible in certain circumstances (Family Law Act 1996, Matrimonial Causes Act 1973 or Children Act 1989) for either joint tenant to seek a court order to transfer the tenancy to their sole name. In all instances where either party is unwilling to give up their tenancy, they should seek independent legal advice.

4.4.2 Amending a tenancy where one party to a joint tenancy has left the property

4.4.2.1. Where one joint tenant has left the property for a considerable period of time, the remaining tenant may request the grant of a sole tenancy. In such cases Triathlon Homes must be satisfied that the absent/ missing tenant has left the tenancy with no

intention to return. We will endeavour to contact the non-occupying party to confirm the situation and that party's intention.

If the absent / missing tenant responds and agrees to the change then a "Deed of Release" can be completed as in 4.4.1.2 above.

If the absent / missing tenant responds and objects to the change then Triathlon Homes will not agree to grant a new sole tenancy to the remaining party. Both parties will be advised in writing to seek independent legal advice as to their options.

If the absent / missing tenant does not respond or Triathlon Homes cannot trace the absent / missing tenant, the remaining tenant may choose to end the tenancy by either serving a valid Notice to Quit or Surrender the tenancy and Triathlon Homes will then consider granting a new sole tenancy as in 4.4.1.5 above.

4.4.3 Sole to joint – grant of a new tenancy

4.4.3.1. Triathlon Homes will consider all written applications from tenants wishing to change their sole tenancies to joint tenancies:-

- if the new tenant is the husband, wife, civil partner or cohabitee and
- complies with the 'one year rule' which means that they can provide clear evidence that they have been living together whether married or not, for the preceding year and
- there are currently no breaches of the existing tenancy including rent arrears and
- The new tenant agrees to take on the rights and responsibilities of the new tenancy.

4.4.3.2 We will ask the new joint tenant to provide:

- One document to prove their identity and eligibility to UK social housing for example a passport
- Two documents to prove they have been living at the property for 12 months if they are a cohabitee.

4.4.3.3 To create the joint tenancy we will end the existing sole tenancy and issue a new tenancy in joint names. If the original sole tenancy is a fixed term tenancy, we will grant a new tenancy for the remainder of the existing fixed term.

4.4.3.4 Triathlon Homes will not create new joint tenancies between siblings or parents and children except in the case of IMR fixed term tenancies see 4.4.5 below.

4.4.4 Amending a tenancy following a court order

Where parties are experiencing relationship breakdown and neither party is willing to give up the tenancy, they should be advised to seek independent legal advice to consider the option of seeking a court order. Those in joint tenancies and in sole tenancies where there is a partner (whether married, civil partners or just co-habiting) may be entitled to protection under the Matrimonial Causes Act or Family Law Act.

The court may make a transfer order through family proceedings to grant the tenancy to one party following a relationship breakdown.

Triathlon Homes will abide by the precise terms of the property adjustment court order; it cannot effect any changes beyond these terms. Where a court merely issues an Occupation order then this does not change the named tenant of the property and Triathlon Homes will not be able to change the tenancy unless a Transfer Order is granted.

4.4.5. Flat sharers - Intermediate Market Rent Fixed Term Tenancies.

We recognise that in the IMR fixed term tenancies there may be a number of adult flat sharers and the composition of the household may change within the fixed term period of the tenancy. Where household members leave and are replaced by other flat sharers we will action requests to amend tenancies through the process of tenancy surrender and grant of a new tenancy. The new tenancy will be for the equivalent period / duration of the remainder of the original fixed term. This is subject to the following:-

- Surrender of tenancy signed by original tenant / joint tenants;
- Written request to grant a new joint tenancy from original tenant (s) wishing to remain in occupation;
- The proposed new joint tenant(s) meeting Triathlon Homes allocations and lettings eligibility criteria;
- A clear rent account and no breaches of tenancy;
- The proposal does not cause overcrowding at the property.

5. Monitoring the policy

This policy will be monitored by the Head of Operations who will review this policy periodically, capturing best practice, customer feedback and legislative changes to inform this review.

5.1 Measures of success

The success of this policy will be measured through customer feedback on this process.

6. Equality Needs Impact Assessment

An equality impact assessment of this policy will be undertaken by January 2016.

7. Glossary

Equity has been severed - Severance of a joint tenancy occurs when one of the joint tenants deals with his or her interest in the property. It is normally done by one of the owners serving a notice of severance on the other(s) or by a new or amended trust deed entered into by all the owners.

Leaseholders – a person(s) in possession of leasehold property, a tenant under a lease whether a shared owner or shared equity.

Spouse - A spouse is defined to include a person, who if not married lives with the tenant as if they were husband and wife. In same sex relationships there is a right of succession for a registered civil partner, of if the partnership is not registered, for someone who is living with the tenant as if they were civil partners.

Survivorship - Under the Housing Acts 1985 and 1988 it is specifically provided that when a joint tenant dies the other tenant becomes the sole tenant not by succession but by 'survivorship' (i.e. he or she was already a joint tenant and becomes a sole tenant simply by having survived the other joint tenant). He or she is treated as a successor and no further succession is possible.

8. Accessibility of information/Publication

This policy is available via the Triathlon Homes website.