

Tenancy Changes Policy

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Responsible officer	Head of Operations (Triathlon Homes) (Responsibility for proposing final draft, implementation and review)
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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 4.6 applies.
- 1.3 Triathlon Homes LLP ('Triathlon Homes') is the owner of 1,379 homes within East Village, is a private landlord to the occupiers of these properties and has appointed a Managing Agent to manage the properties on its behalf. The Managing Agent is also a member 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 Regulator of Social Housing.

- 1.4 This document should be read in conjunction with the Triathlon Homes Glossary.

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

- 3.1 Legislation/Regulation
 - Housing Act 1985.
 - Housing Act 1988.
 - Civil Partnership Act 2004.
 - Family Law Act 1996

3.2 Links to Key Triathlon Homes Policies

- Tenancy Agreements
- Discretionary Tenancy 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.

Succession

4.4 Death of a tenant – Rights of Succession

- 4.4.1 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.
- 4.4.2 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 4.6 below)
 - ;
 - Any legal notices that are in effect; and
 - Maintenance of tenant improvements.
- 4.4.3 Only one succession is permitted, if the deceased tenant was themselves a successor no further succession can take place.
- 4.4.4 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
- 4.4.5 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.

- 4.4.6 We will seek possession of the property if someone who does not qualify to succeed tries to take over the tenancy.
- 4.4.7 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.

Assured periodic tenancy – Succession Rights

- 4.4.8 This applies to both Social Rent assured Periodic tenancies and Intermediate Market Rent assured shorthold periodic tenancies. The following will be qualified to succeed:-
- 4.4.9 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;
- 4.4.10 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.
- 4.4.11 The Successor must have been living at the property as their only or main home at the time of the tenant's death.
- 4.4.12 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.
- 4.4.13 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.

4.5 Fixed Term Assured short hold tenancies – succession rights

- 4.5.1 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.

- 4.5.2 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.
- 4.5.3 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.

4.6 **Succession and Shared Owners**

- 4.6.1 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).
- 4.6.2 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.
- 4.6.3 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.
- 4.6.4 We will not re-house any remaining household occupants on the death of a shared owner.
- 4.6.5 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.

4.7 **Reasons to refuse a claim to exercise succession rights**

- 4.7.1 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.

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

- 4.8.1 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.
- 4.8.2 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 in line with the Discretionary Tenancy Policy.
- 4.8.3 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.
- 4.8.4 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.

Amending tenancies

4.9 Joint to sole tenancies

- 4.9.1 As a landlord we do not have the right to 'transfer' a tenancy from joint names to a sole name. We cannot 'remove' a name from an agreement. The joint tenancy will need to be ended and a sole tenancy created.
- 4.9.2 Where a relationship has broken down either joint tenant can request, via a form, to end the joint tenancy.
- 4.9.3 Changes will be approved subject to the following:
- Triathlon must be satisfied that the request is either the desire of both parties or a court has ordered a transfer.
 - There are currently no breaches of the existing tenancy including rent arrears.
 - There must be no outstanding court order or injunction preventing the tenancy being ended.
- 4.9.4 In all instances where either party is unwilling to give up their tenancy, they should seek independent legal advice.
- 4.9.5 If the joint tenants are married or are civil partners, either tenant can apply for a transfer of tenancy through the courts as part of divorce or judicial proceedings. This is called a 'property transfer order'.

- 4.9.6 Joint tenants who are not married or who have not entered into a civil partnership can apply for a transfer of tenancy through the courts in a similar way to married couples. The courts will consider a range of criteria before making a decision.
- 4.9.7 Where one joint tenant has left the property, it is not 'abandonment' in legal terms and Triathlon will normally expect the remaining tenant to seek agreement from the departed joint tenant before seeking to end the joint tenancy and seek a sole tenancy. If the remaining tenant is unable to secure contact, they must seek independent legal advice to obtain a court order to transfer the tenancy to their sole name.
- 4.9.8 If such an order is made Triathlon is obliged to follow the orders of the Court and transfer the tenancy.

4.10 Fixed Term Assured Shorthold Tenancies

- 4.10.1 If the tenancy is an assured shorthold tenancy with a fixed term of six years or fewer, we will generally refuse to change the agreement. The decision whether to provide a new joint or sole tenancy will be considered close to the end of the fixed term as part of the fixed term tenancy review and reissue process.
- 4.10.2 A tenancy cannot be ended via a notice to quit in the fixed term period, only via surrender and if there is agreement by all parties.

4.11 Sole to Joint Tenancies

- 4.11.1 For tenants, changing a tenancy introduces additional risks and disadvantages. These include:
 - Possible loss of tenancy status
 - Increase in rent or other charges
 - Vulnerability of the original tenant to eviction or homelessness at a later stage
- 4.11.2 Tenants wishing to add a partner to their tenancy will be advised of the rights and obligations of joint tenants so that the legal implications are understood.
- 4.11.3 We will only consider permitting a tenancy change in exceptional circumstance principally where Triathlon is satisfied based on evidence that the change will improve the original tenant's likelihood of sustaining the tenancy at the existing property.
- 4.11.4 Once this is established applicants must also be able to satisfy us that the request is made as result of the couple's genuine desire to live in the property as long term partners.
- 4.11.5 Applicants must comply 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.

4.11.6 The one-year rule does not apply to the spouse or civil partner of a secure tenant, (Sections 87 and 91 of the Housing Act 1985). They can be added to the tenancy with immediate effect.

4.11.7 There are currently no breaches on the existing tenancy including no arrears on the account.

4.11.8 The sole tenancy will be terminated, and a new tenancy will be issued. The new tenancy will be the standard terms and conditions appropriate to the property and maybe different to the current tenancy agreement.

4.12 Flat sharers - Intermediate Market Rent Fixed Term Tenancies

4.12.1 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 as set out above capturing best practice, Key Performance Indicators, customer and stakeholder 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

6.1 Triathlon Homes recognises its duty to eliminate unfair treatment and discrimination in the services it provides and to promote and value respect in everything it does.

7. Glossary

Succession

Succession is the process in which a tenancy is taken over by another person following the death of a tenant. Statute sets out succession rights for partners and family members for different tenancy types. The tenancy does not end but continues in the name of the successor. There can be only one succession and there cannot be joint successors.

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 on the Triathlon Homes website

Policy Controls sheet		
Author	Date	Main changes and why (i.e. change in legislation, change in internal processes)
Katie Shaw and Judith Tovey, L&Q Policy	June 2018	<p>Joint to Sole – no longer done through deed of assignment process. Through mutual agreement or court order to match L&Q Tenancy Change Policy</p> <p>Sole to joint – now only allowed in exceptional circumstance</p>