

Version

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Housing Management

Assignment to a Potential Successor

Scope:	This policy applies to Circle 33 Housing Trust, Old Ford Housing Association, Mercian Housing Association, Merton Priory Homes, Mole Valley Housing Association, Roddons Housing Association, Russet Homes, South Anglia Housing and Wherry Housing Association
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Signed Off :	Group Policy Forum 4 th July 2008
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Policy Owned by:	Policy and Planning
KLOE:	Tenancy and Estate Management
QAF (Supported Housing):	n/a
Statute:	Civil Partnership Act 2004 Children Act 1989 Housing Act 1988 Housing Act 1985 Matrimonial and Family Proceedings Act 1984 Matrimonial Causes Act 1973
Regulatory Code:	3.5.3 3.5.4

Assignment Policy

1 Scope

1.1 This policy applies to the general needs and supported housing residents of the following group members:

- Circle 33 Housing Trust
- Old Ford Housing Association
- Mercian Housing Association
- Merton Priory Homes
- Mole Valley Housing Association
- Roddons Housing Association
- Russet Homes
- South Anglia Housing
- Wherry Housing Association.

2 Policy Statement

2.1 Assignment of a tenancy is the legal transfer of an interest in a property from one person to another and can only happen in limited circumstances.

2.2 This policy provides a clear framework within which the assignment of a tenancy to a potential successor can be properly awarded and managed. Procedures for managing assignment by mutual exchange can be found in the group's [Mutual Exchange](#) policy.

2.3 Circle Anglia is committed to fulfilling our statutory and contractual obligations regarding assignments to a potential successor, without compromising our remit of providing housing to those in greatest housing need.

2.4 Circle Anglia's policy on assignments is aligned with the Housing Inspectorate's Key Lines of Enquiry (KLOES) for Tenancy and Estate Management by:

- complying with statutory regulations
- providing an easy and equally accessible service to all tenants in managing this tenancy change
- providing appropriate advice regarding tenancy rights and status, to tenants requesting an assignment.

3 Policy

- 3.1 In order to be valid, an assignment must take place by deed. Where there is no deed, there can be no valid assignment and the tenancy remains with the tenant who tried to assign.
- 3.2 The exception to this is where an assignment of the tenancy is ordered by the court. No deed is necessary because the order itself effects the assignment.
- 3.3 An assignment of tenancy generally means that the person taking the assignment will be treated as a successor. They will have no further statutory rights of succession.
- 3.4 However, a person taking an assignment by court order or mutual exchange will not be treated as a successor unless the tenant they took the assignment from was a successor.

4 Protected rights tenancies

- 4.1 Where there has been a stock transfer, the rules regarding further successions on a tenancy following an assignment may be altered. The terms of the protected rights tenancy agreement may provide new rights of succession to transferring tenants, even if they previously took an assignment.

5 Secure tenancies

- 5.1 Under section 91 of the Housing Act 1985, a secure tenancy can only be assigned in the following circumstances:
 - by mutual exchange, see [Mutual Exchange](#) policy
 - by court order
 - by transfer to a potential successor.

Assignment to a potential successor

- 5.2 Secure tenants have a statutory right to assign their tenancy to a person who would be qualified to succeed on their death:
 - married partner
 - civil partner
 - partner living as if they were a married or civil partner of the tenant, as long as they can provide proof of 12 months' residency

- qualifying family member who can prove that they have lived with the tenant for at least 12 months.

5.3 A very small number of secure tenants may be entitled to an additional succession right, following the Walker v Birmingham City Council case in 2006. Further details can be found in the policy briefing [Secure Succession Rights](#).

Qualifying family members

- parent or grand parent
- child or grand child
- brother or sister
- uncle or aunt
- nephew or niece.

5.4 This list of family members is exhaustive and cannot be added to. See [Successions](#) policy. However, half blood relatives will be treated as full blood relatives.

5.5 There will be no right to assign to a potential successor where the tenant has no further succession rights.

5.6 The exception to this may be where a new succession right is granted in a protected rights tenancy agreement following a stock transfer.

6 Assured tenancies

6.1 Under section 15 of the Housing Act 1988, an assured tenancy cannot be assigned without the consent of the landlord. There is no statutory right to assign.

6.2 However, it is Circle Anglia's policy to grant assured tenants the same rights as secure tenants through the terms of the tenancy agreement.

6.3 An assured tenancy can therefore be assigned in the following circumstances:

- by mutual exchange, see [Mutual Exchange](#) policy
- by court order
- by transfer to a potential successor.

Assignment to a potential successor

6.4 Circle Anglia grants assured tenants the right to assign their tenancy to someone who would be entitled to succeed to the tenancy should the tenant die:

- married partner
- civil partner
- partner living as if they were a married or civil partner of the tenant, as long as they can prove 12 months' residency
- qualifying family member who has lived with the tenant for at least 12 months– see below.

Qualifying family members

- parent or grand parent
- child or grand child
- brother or sister
- uncle or aunt
- nephew or niece.

6.5 This list of family members is exhaustive and cannot be added to. See [Successions](#) policy.

6.6 There will be no right to assign to a potential successor where the tenant has no further succession rights.

6.7 The exception to this may be where a new succession right is granted in a protected rights tenancy agreement following a stock transfer.

7 Where an assignment to a potential successor cannot take place

7.1 An assignment cannot take place where the tenant has no further succession rights.

7.2 There will be no right of succession, and therefore no right of assignment where the tenant:

- succeeded to the tenancy, unless this was a contractual succession to a spouse where a new tenancy agreement was signed, in which case further guidance should be sought from the Policy team
- was previously a successor to another one of our properties and was granted a new tenancy

- was a joint tenant and became a sole tenant following the death of the other tenant (unless a new succession right has been awarded following a stock transfer)
- had the tenancy assigned to them by a court in divorce or separation proceedings and the original tenant was a successor
- had the tenancy assigned to them by way of mutual exchange and had succeeded to their previous tenancy.

7.3 Care will be taken to check the terms of the tenancy agreement, as some tenancy agreements which were inherited by Circle Anglia following stock transfers make provision for more than one succession to a tenancy.

8 Starter tenancies

8.1 The starter tenancy can only be assigned by court order.

8.2 The starter tenancy cannot be assigned by mutual exchange in the first 12 months or in any extension period. See [Starter Tenancy](#) policy.

9 Joint tenancies

9.1 A joint tenancy can be assigned in the following circumstances:

- by mutual exchange, where both joint tenants agree
- by court order.

9.2 In most cases, a joint tenant cannot assign their tenancy to a potential successor, as the other joint tenant will be the successor if one tenant dies.

10 Assignment by mutual exchange

10.1 The most common form of assignment is by mutual exchange, where a tenant exercises their right to 'swap' their home with another assured or secure tenant of a housing association or local authority. Procedures for managing mutual exchange requests can be found in the [Mutual Exchange](#) policy.

11 Assignment by court order

11.1 An assignment can take place if ordered by the court as part of divorce or separation or dissolution proceedings under:

- section 24 of the Matrimonial Causes Act 1973
- section 17(1) of the Matrimonial and Family Proceedings Act 1984
- schedule 1 of the Children Act 1989
- schedule 5 and schedule 7 of the Civil Partnership Act 2004.

11.2 This type of assignment is not classed as a succession, and the status of the original tenancy is transferred to the assignee. A secure tenancy will remain secure and an assured tenancy will remain assured.

11.3 Assignment by court order will be classed as a succession where the assigning tenant was themselves a successor.

12 Assignment to a minor

12.1 The general rule is that a minor cannot hold a legal tenancy, so any application to assign a tenancy to a child can be refused.

12.2 Where exceptional circumstances apply, the legal tenancy would be held on trust by a third party until the minor's eighteenth birthday. Legal advice should be obtained in these cases.

13 Discretionary decisions

Secure tenancies

13.1 There may be situations where assignment is prohibited as none of the three grounds for assignment under s1 of the housing Act 1985 applies, but where exceptional circumstances exist which would make an assignment desirable. Where Circle Anglia decides that this is the case, a new assured tenancy will be granted.

13.2 This may apply to a carer living at the property, or a non-family member taking care of the tenant's dependants, but is entirely dependent on the 'assignee' fulfilling the homelessness criteria below. In every case, a new assured tenancy will be granted, regardless of the tenancy type held by the original tenant.

13.3 Because of our duty to make the best possible use of our housing stock and to meet housing need in the areas where we work, we need to very carefully consider the following in making a decision:

- the fact that new succession rights will be granted with the new tenancy
- the extent of housing need in the area
- the potential tenant's circumstances, where undue hardship or distress may be caused by losing their place of residence
- the potential new tenant's suitability to the property, where there may be a question of adaptations in the property, or under-occupation
- their ability to pay rent and sustain the tenancy

- whether they had priority need and would be eligible for re-housing by the local authority under the Homelessness Act Policy Briefing 25, The Homelessness Act 2002.

Assured tenancies

- 13.4 Although our tenancy agreements restrict the rights of assured tenants to the same three circumstances as secure tenants, there is more flexibility to grant a discretionary assignment.
- 13.5 It is possible to waive the restrictions under the tenancy agreement and rely on Section 15 of the Housing Act 1988, which permits an assignment with the landlord's consent. This would apply to situations where the tenancy had not been succeeded to already, or assigned to a potential successor.
- 13.6 In this case, the normal assignment paperwork would be completed, namely the Deed of Assignment and the Licence to Assign.
- 13.7 However, where the tenancy had already previously been assigned to a potential successor, and no rights to assign existed, it would still be within our power to allow a further assignment. The criteria for assessing the grant of a new tenancy would be the same as for secure tenancies above and would be the exception rather than the rule.

14 Rent arrears

Secure tenancies

- 14.1 As secure tenants have a statutory right to assign, we cannot refuse an assignment to a potential successor on the grounds of rent arrears or other breach of tenancy agreement. If there are arrears, these are included in the [Deed of Assignment](#) and [Licence to Assign](#) and the assignee undertakes repayment.

Assured tenancies

- 14.2 As assured tenants have no statutory right to assign, we will refuse the assignment until the arrears are cleared and any other breach of tenancy has been remedied.
- 14.3 In the case of an assignment by court order, the court will award the arrears to either the tenant who is being ordered to assign, the assignee, or split them between both. This arrangement would be made clear on the court order.

15 Under-occupation

- 15.1 We cannot withhold consent to the assignment of a secure tenancy on the grounds of under-occupation, unless the terms of the tenancy agreement specify that we can.
- 15.2 We can however take action once the assignment has taken place.
- 15.3 We will however assess each under-occupation case on its individual merits and where, for example, a tenant wished to assign to a child who had lived in the property for 20 years or more, we would take a more empathetic approach.

Secure tenancies

- 15.4 Once the assignment has taken place on a secure tenancy, possession may be sought using Ground 16, where the accommodation is more extensive than reasonably required by the tenant. See [Grounds for Possession](#).
- 15.5 We can only use Ground 16 for secure tenancies where we are able to make one firm offer of suitable alternative accommodation. Advice should be sought from the Policy team on the use of Ground 16.

Assured tenancies

- 15.6 We may refuse consent to the assignment of an assured tenancy where this would result in under-occupation of the property.

16 Adapted properties

Secure tenancies

- 16.1 Where a property has been specially adapted for use by a person with disabilities or someone with special needs, which the assignee does not need, then we can rely on Grounds 13, 14, or 15 for secure tenancies in order to gain possession. Suitable alternative accommodation must be offered. See [Grounds for Possession](#).

Assured tenancies

- 16.2 In the case of an assured tenancy, we may seek possession using Ground 9, where suitable alternative accommodation is available for the tenant. See [Grounds for Possession](#).

17 Supported housing tenancies

Secure tenancies

- 17.1 Statutory rights to assign secure tenancies exist outside of the tenancy agreement. Assignments in supported housing, where residents are in receipt of specialised care and potential assignees may have no need of that care or support, may present certain difficulties.
- 17.2 Statutory rights cannot be excluded or refused, even if they are not mentioned in the resident's tenancy agreement. Secure tenants have a statutory right to assign their tenancy to a person who would be qualified to succeed to the tenancy i.e., a married, civil or common-law partner, or a qualifying family member.
- 17.3 However, once the assignment to a person who is not appropriate to the scheme has taken place, we may seek possession using Grounds 13, 14, or 15 in the case of secure tenants. See [Grounds for Possession](#).

Assured tenancies

- 17.4 In the case of assured tenants, there is no statutory right to assign. The tenancy agreement will be checked in each case, as some may specifically exclude assignments taking place.
- 17.5 Where the assured tenancy agreement does not prevent an assignment, we can refuse consent to assign to a person who is not appropriate to the scheme.
- 17.6 Assignments cannot be prevented where there has been a court order.

18 Service Standards

- 18.1 Once an assignment has been approved, we will make contact within 5 working days to arrange an appointment to sign the relevant documents.

19 Monitoring

- 19.1 We record all requests to assign a tenancy and note the reasons for approval or refusal.

20 Equality and Diversity

- 20.1 Circle Anglia recognises that customers of all races, ages, religions, gender, sexual orientation, literacy levels and disability should be treated equally and fairly and we will not discriminate in implementing these policies and procedures.

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- 20.2 As part of this undertaking, we give equal standing to tenants who are married, civil partners, or gay, lesbian or heterosexual common-law partners, except where this approach is overridden by the law.
- 20.3 It is our policy to define the term 'partner' and 'spouse' as referring equally to:
- married couples
 - civil partners
 - common-law partners
 - gay or lesbian couples.
- 20.4 We will be sensitive to tenants' individual needs and will tailor our services and approach accordingly.
- 20.5 We will take steps to identify any language or communication requirements and ensure that we provide information in the appropriate format.
- 20.6 All customers will have access to this document upon request or from our website www.circleanglia.org/customers where appropriate.
- 20.7 This document can be translated or provided upon request in alternative formats, such as, Braille, large print and audio.
- 20.8 Equality and diversity training is mandatory for all staff.

21 Publicising the Policy

- 21.1 Circle Anglia publicises its policies and procedures on Assignment to residents and staff in a number of ways:
- Resident Handbook
 - Resident Website
 - CIRANO
 - Policy Briefings and
 - Training

Related Documents

Document	Link
Connected Policies:	Grounds for Possession Joint Tenancies Mutual Exchange Starter Tenancy Succession
Forms and Letters:	Assignment Information Family Member Letter Assignment Approved Letter Assignment Refused Letter Licence to Assign/Deed of Assignment
Leaflets:	
Other:	

Version history

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Brief summary of changes:	N/A		
Staff consultation (teams):	Neighbourhood Teams: all RSLs Senior Managers Policy Review Group (SMPRG)		
Resident consultation:	Old Ford Housing Services (OFHS) Old Ford Tredegar, Monteith, Lefevre (OFTML) Mole Valley Operations Working Group		
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