

Assignment Policy

Stevenage Borough Council

2024 - 2026

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| Business Unit and Team | Housing and Neighbourhoods |
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1. Purpose

1.1 Purpose of the Assignment Policy

The purpose of this policy is to outline how we award assignments of tenancy to residents living in rented homes owned by Stevenage Borough Council (SBC) reflecting current legislation and the Council's housing Allocation Policy.

Social housing is a valuable asset, which provides security and stability to people in housing need. As a responsible social landlord, SBC has a duty to make the best use of public resources by ensuring that its housing stock is managed appropriately.

1.2 The aim of the Assignment Policy

The aim of the policy is to ensure that assignment applications are dealt with consistently, fairly and in accordance with legislation.

The specific objectives of the policy are to:

- Make best use of the Council's available homes and to offer tenancies that best match the needs of individual households.
- Provide staff and tenants with a clear framework for managing and determining assignment to tenancies.
- Set out the statutory rights available to assign to a tenancy.
- Take full and fair consideration of the residents' or person in occupation's circumstances before taking decisions having due regard to the Public Sector Equality Duty.
- Being proactive in identifying fraud and reporting suspected cases to the relevant departments.

This policy replaces a previous Succession and Assignment Policy that was last revised in 2015.

2. Scope

This policy covers all homes let by the Council under secure and introductory tenancies.

2.1 Role and Responsibilities

- Resident Services Manager - Responsible for the implementation of this policy; hearing appeal decisions; and the management of the Resident and Estates Team in processing assignment applications and for approving assignment applications.
- Senior Housing Officer - Responsible for ensuring compliance with this policy, the management of the team in processing assignment applications, and for approving applications.
- Housing Officers - Responsible for the receiving, assessing and processing assignment applications.
- Lettings and Allocation Officers - Responsible for supporting Housing Officers in transferring a tenancy to an assigned tenant, ensuring tenancy records are updated on our software systems and any appropriate documents are properly completed and signed.
- Customer Contact Centre - Responsible for receiving and dealing with general enquiries about assignment applications and transferring residents to Housing Officers for further information and support.

3. Legal Framework

3.1 Relevant Legislation

The following legislation relates to the Assignment Policy and we are committed to applying the terms within this document.

- Housing Act 1985
- Housing Act 1996
- Localism Act 2011
- Matrimonial Causes Act 1973
- Matrimonial and Family Proceedings Act 1984
- Children Act 1989
- Family Law Act 1996
- Civil Partnership Act 2004
- Marriage Same Sex Couples Act 2013
- Public Sector Equality Duty
- Data Protection Act 2018

4. Equalities

Under the Equality Act 2010 the Council has a legal duty to fulfil the requirements of the Public Sector Equality Duty (PSED). Through this duty, the Council will carry out its functions in a way that:

- a) Removes discrimination, harassment, victimisation and any other conduct that is unlawful under the Equality Act 2010.
- b) Promotes equal opportunities between people who have a protected characteristic(s) and those who do not.
- c) Encourages good relations between people who have a protected characteristic(s) and those who do not.

Further information on the Council's fulfilment of the PSED is set out in the Equality, Diversity and Inclusion (EDI) Policy 2022 which is applicable to all employees of the Council, Councillors and contractors or suppliers who provide services on behalf of the Council.

5. Data Protection

The Council regards respect for the privacy of individuals and the lawful and careful treatment of personal information as very important to its successful operations and to maintaining confidence between the Council and those with whom it carries out business. The Council will ensure that it treats personal information lawfully and proportionately as set out in the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

The Council's principal aim is to ensure that all personal data processing carried out by the Council, or on its behalf, complies with the seven data protection principles and other key legislative requirements. For further information on the Council's approach to handling information please see [the Data Protection Act web page](#) at www.stevenage.gov.uk

6. Policy

The right to assign to a tenancy differs according to the type of tenancy held and when the tenancy was granted. It is also dependent upon the person applying to assign to the tenancy meeting certain criteria. With all tenancies, there can only be one assignment. Our Assignment Policy helps us to deliver our corporate and strategic aims by:

- Setting out clear criteria and expectations for residents requesting a tenancy.
- Helping to ensure the best use of our stock and to improve flexibility for our residents.

6.1 Our legal Position

Statutory rights of secure tenants

In general, a secure tenant may not assign his or her tenancy (Section 92 (1) of the Housing Act 1985). There are three exceptions to this strict rule (Section 91(3)):

- an assignment by way of a mutual exchange – section 92
- an assignment in made in pursuance of an order in certain matrimonial, civil partnership or Children Act proceedings (property adjustment orders)
- an assignment to a person who would qualify to succeed to the tenancy if the tenant died – section 87

6.2 Assignment by way of a mutual exchange

The Council recognises that promoting mutual exchanges encourages tenant mobility and creates sustainable communities through best use of housing stock.

We will assist tenants to move by way of exchanges wherever possible and encourage tenants to register with Home Swapper and House Exchange and seek a mutual exchange by posting their details online. This service is free to Council tenants and more details can be found at www.homeswapper.co.uk and www.houseexchange.org.uk.

All requests for a mutual exchange must be made in writing. Provided all the necessary information has been provided by the tenant, a decision on the request will be made in writing within 42 days of the date the request was received. Requests for mutual exchanges will only be refused on one of the grounds laid out in in schedule 3 of the Housing Act 1985 or schedule 14 of the Localism Act 2011.

The Council may approve a request for a mutual exchange but attach conditions before allowing the exchange to take place. Such conditions will include the remedying of a breach of tenancy conditions, e.g. repayment of outstanding rent arrears.

When an exchange is approved between assured/secure tenants, the exchange of tenancies will take place via a Deed of Assignment where each tenant steps into the other's shoes and takes over the other tenant's tenancy type and terms. New tenancies are not signed.

A secure tenant has the right to exchange his or her tenancy with another secure tenant of the Council or another secure or assured tenant of any other Council or registered provider landlord, provided both tenants have the written consent of their respective landlords.

The Council can only withhold consent to a mutual exchange by assignment on certain grounds. The Council's Mutual Exchange Policy details these grounds and the circumstances where the Council may refuse permission to exchange or impose conditions.

The Council may give consent to a mutual exchange conditional on a breach of tenancy conditions, for example rent arrears, being remedied before the exchange may take place.

Demoted tenants do not have the right to exchange.

The Localism Act 2011 s158 introduces rules which will apply when a secure tenant wants to exchange with the tenant of another Council or registered provider landlord with a flexible or fixed term tenancy of longer than two years. Such exchanges will not be carried out by assignment but by surrender and re-grant of tenancy. For tenants applying for this type of mutual exchange, different rules apply for tenancies granted before 1 April 2014 to those granted after 1 April 2014.

Assignment in pursuance of a Court Order

Where a secure tenant of the Council is granted a property transfer order by a Court Order in pursuance of certain matrimonial, civil partnership or Children Act proceedings.

Where a property transfer order has been made by the Court, the Council will fulfil the court order to transfer the tenancy by way of a Deed of Assignment.

Assignment to a person who would qualify to succeed to a tenancy

A secure tenant may assign their tenancy to a person who would otherwise qualify to succeed to their tenancy if they died immediately before the assignment. See the Succession Policy for the details regarding this.

The Council will only consider requests to assign a tenancy from a qualifying tenant. The Council does not offer discretionary assignments.

The written consent of the Council must be obtained before an assignment can be carried out.

An assignment will be invalid if it is not undertaken using a Deed of Assignment.

Demoted tenants do not have the right to assign a tenancy.

Mutual exchanges under Localism Act 2011

Mutual exchanges between secure tenants and tenants who hold a flexible or fixed term tenancy will not be carried out by assignment of tenancy.

More details can be found in the Council's Mutual Exchange Policy.

Assignment to a person who would qualify to succeed to a tenancy

6.3 Introductory Tenancy

An Introductory tenancy is generally not capable of assignment. However, there are some exceptions as per Section 134 Housing Act 1996 which are:

An assignment in pursuance of an order made under—

- section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings),
- section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, and or
- paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents);

an assignment to a person who would be qualified to succeed the tenant if the tenant died immediately before the assignment.

Where an introductory tenant requests to assign their tenancy, we can only process the request in line with above.

In the event of any property adjustment order made by the court we shall request to see the order before making any adjustments and, in all cases, follow our procedure.

An Introductory tenancy does not have the right to mutual exchange.

6.4 Appeals Procedure

Applicants may make an appeal against a decision not to allow an assignment in writing or dictated over the phone to a Housing Officer within five working days from the date of refusal.

The Resident & Estates Manager will consider the appeal and will advise the applicant in writing of the decision. A decision will be made within ten working days unless an alternative timescale is agreed. The decision of the Resident Services Manager will be final.

This appeal procedure does not affect the right to use our complaints procedure make a complaint.

7. Consultation

This policy has been developed in consultation with key staff within SBC. Government has directed the legal perspective of the policy, but key related stakeholders have also influenced how SBC intends to implement and manage the policy.

This policy will be consulted on with tenants prior to a key officer decision.

8. Monitoring and Review

This policy and the related procedure will be reviewed in full every two years or when there are changes in legislation to ensure they are still relevant and to incorporate change to legislation or best practise.

9. References and Resources

- Equalities Act 2010
- Human Rights Act 1998
- Welfare Reform Act 2012
- Housing Act 1996 Introductory Tenancies (IT's) Court Orders that effect assignment:
- Section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings)
- Section 17 (1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce)
- Paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents)
- Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004 Internal Tenancy Agreement
- SBC Allocation Policy
- Housing Act 1988 Section 15: Assignment:
- Family Law Act 1996 Schedule 7: Transfer of Certain Tenancies
- Housing Act 1988 Schedule 2: Grounds for Possession – Assignment without consent
- Regulator of Social Housing: Tenancy Standard

10. Abbreviations and Definitions

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|------|------------------------------------|
| EDI | Equality, Diversity and Inclusion |
| GDPR | General Data Protection Regulation |
| PSED | Public Sector Equality Duty |

We have defined the following terms we use throughout the Policy:

- An Assignment is a transfer of the tenancy to another tenant or tenants by deed during the lifetime of the original tenant.
- A License to Assign is a formal document granting permission to undertake an assignment by deed and is granted prior to the deed of assignment being executed.
- A Deed of Assignment is the legal document used to ensure that a tenancy is legally assigned to a new tenant.

11. Appendices

Appendix 1 – Equality Impact Assessment (EqIA).

12. Version History

| Date | Outlined Amendments | Author |
|------------|---|----------------|
| April 2024 | Updated the template and reassessed policy in line with current legislation | Amanda Rogers |
| July 2024 | KC amended version | Kerry Clifford |