

# TENANCY CHANGES POLICY

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## 1 INTRODUCTION

1.1 The Tenancy Changes Policy sets out Stockport Homes' Ltd (SHL) approach to dealing with requests for changes of tenancy and includes:

- Succession and Assignment
- Use and Occupation
- Relationship Breakdown
- Name Changes
- Transitioning Customers Name and Gender

1.2 In most cases, amendments to a tenancy will only be made when a tenancy is secure or assured, however there are some circumstances (for example if a tenant has passed away) whereby amendments can be made to an introductory or assured short-hold tenancy.

1.3 The purpose of the policy is to provide clarity to both SHL and its customers on the type of changes permitted and SHL's approach to these.

## 2 STRATEGIC LINKS

2.1 The Tenancy Changes Policy has the following strategic links:

- SHGs Mission – 'One team, transforming lives' and its Aims 'Be accountable to customers and Provide comfortable, affordable homes'
- The Housing Act 1985
- The Localism Act 2011
- Mutual Exchange Policy and Procedure
- Stockport Council Allocation Policy
- Domestic Abuse Policy
- Housing Act 1996 <sup>1</sup>
- The Allocations Policy
- Empty Property Management Policy
- SMBC and SHG Tenancy Agreements
- Accommodation 16/17-year olds Policy
- Squatting and Illegal Occupation Policy
- SHL Sign up Policy
- Abandonment Policy
- SHG Homelessness Strategy
- Equality and Diversity strategy.

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<sup>1</sup> the most recent statutory guidance can be found in Allocation of accommodation: Guidance for local housing authorities in England (2012 Key Features of the Policy)

### 3 SUCCESSION AND ASSIGNMENT

3.1 The Succession Policy sets out how a tenancy can be transferred to an individual, usually a spouse, partner or family member in the event of the death of the tenant

3.2 Both Succession and Assignment can only take place if certain criteria can be met i.e. the applicant must have resided at the address for 12 months prior to the death of the tenant and there has been no previous assignment or succession.

3.3 Where a tenancy was originally a joint tenancy and one of the joint tenants dies, this counts as a succession and the surviving partner becomes the sole tenant.

3.4 Someone who meets all of the criteria to succeed to a tenancy can still succeed even if they are under 18 years old.

3.5 The Localism Act 2011 amended the succession and assignment rights of people living with secure tenants where the tenancy was created after 1<sup>st</sup> April 2012. In these cases, a statutory right to succeed or assign is limited to the spouse/partner of the deceased tenant.

3.6 For secure tenancies created before 1<sup>st</sup> April 2012, the right to succeed may be claimed by a member of the deceased tenant's family, subject to certain criteria being met.

3.7 Succession applies to the tenancy, not the property. Even though a member of the deceased tenant's family may have a statutory right to succeed to a secure tenancy, (with the exception of a surviving spouse/civil partner) if they are under-occupying, for example a single person succeeds to a two-bed property or larger, SHG may seek to move the new tenant to suitable alternative accommodation in order to ensure the best use of our stock.

3.8 Where there is no statutory right of succession, SHL can exercise discretion to offer a new tenancy to the person left in occupation on the death of a tenant (for the existing property or an alternative property).

3.9 SHL's Assignment Policy, outlines how a secure or assured tenancy can be transferred to an individual, usually a spouse, partner or family member nominated by the tenant.

3.10 Assignment of tenancy can occur when:

- A tenant mutually exchanges their home with another secure or assured tenant – (see Mutual Exchange Policy and Procedure)
- When there is a relationship breakdown and a court issue a matrimonial order as part of divorce or separation proceedings (see Relationship Breakdown, Section 5 below).

- The person is a family member who would have qualified to succeed if the tenant had died.

3.11 SHL will only allow a tenant to assign their tenancy to immediate family members where a tenancy was created before 1<sup>st</sup> April 2012.

3.12 Immediate family members must have resided with the tenant for 12 months prior to the request for the tenancy to be assigned and the property must be their only and principal home.

3.13 When an application to succeed or assign a tenancy is received, SHL will consider the suitability and size of the property for the applicant.

3.14 Any rent arrears must be paid in full by the tenant before an assignment can take place. In all joint tenancies, any rent arrears on the account are the responsibility of both tenants.

3.15 Once an assignment has taken place, all the rights and responsibilities of the tenancy are transferred from the original tenant to the new tenant.

3.16 SHL has no responsibility to support the original tenant to seek alternative accommodation.

## **4 USE AND OCCUPATION**

4.1 A use and occupation account is created when a person is left in occupation following the death of, or abandonment by, the named tenant(s). It allows SHL to recover costs from person(s) who are living at a property but have no legal entitlement to reside there. It is a payment account not a tenancy and must never be referred to as such.

4.2 The use and occupation provision allow a person left in occupation to stay in the property on a short-term, temporary basis whilst they seek alternative accommodation (however, they have no legal rights to remain there). During this time, the person left in occupation is expected to pay a property charge which is known as 'mesne profits'.

## **5 RELATIONSHIP BREAKDOWN**

5.1 Relationship breakdown can be a common cause of tenancy failure and homelessness, raising a number of issues for social housing providers.

5.2 SHL aim to minimise the social impact of relationship breakdown with particular regard to domestic abuse, vulnerable adults and the effect on children and other vulnerable family members.

5.3 SHL recognises that there are a wide range of relationships that exist, including same sex marriages/relationships and civil partnerships.

5.4 SHL aims to carry out effective and consistent tenancy management to ensure a fair and transparent service is provided to customers in a

relationship breakdown situation whilst also making best use of housing stock and preventing homelessness.

## 6 NAME CHANGES

6.1 A tenant can request a tenancy amendment for a change of name on the receipt of one of the following:

- Marriage or civil partnership certificate
- Divorce or dissolution certificate
- Statutory declaration or deed poll.

### Joint to Sole Tenancy Request

6.2 SHL will only allow a tenancy amendment from joint to sole:

- If there has been a relationship breakdown
- If one tenant has moved in to residential care (or other types of support accommodation)
- Upon death of one of the joint tenants.

### Sole to joint tenancies

6.3 SHL does not allow tenancy variations for sole to joint tenancies. For a tenancy to be created as joint, both applicants must be registered on the application and both be present at the initial sign up appointment.

## 7 TRANSITIONING CUSTOMERS NAME AND GENDER CHANGES

7.1 SHL is committed to equality and diversity and aims to ensure that the best services are being delivered to all customers. This commitment will also ensure SHL meets the needs of the diverse communities by providing services that are accessible, inclusive and non-discriminatory.

7.2 The purpose of this policy is to ensure that SHL not only comply with statutory requirements under legislation but to ensure that all customers are supported throughout their transition when dealing with or contacting SHL.

7.3 SHL will use the umbrella term 'Trans', which is a term to describe people whose gender is not the same, or does not sit conformably with, the sex they were assigned as birth. Trans people may describe themselves using one or more of a wide variety of terms including: (but not limited to) transgender, transsexual, non-binary and cross dressing.

7.4 SHL will recognise and support customers who are transitioning and have assumed a new gender if the customer has started the process or carried out the process of gender reassignment

7.5 SHL will ensure that all staff understand their obligations under legislation and implement this policy

7.6 SHL will make appropriate amendments to documents or systems to reflect the preferred name and/or gender of the customer transitioning. This will depend on what which legal changes have been made

7.7 SHL will endeavour to use all customers' preferred names and pronouns. Where legal changes have not been made, this will be applied at a local service level, but systems will not have changes applied.

### **Equality Act 2010**

7.8 The Act defines gender reassignment as a protected characteristic. People who are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex have the protected characteristic of gender reassignment.

### **Gender Recognition Act 2004**

7.9 Where a full gender recognition certificate is issued to a person, the person's gender becomes, for all purposes, the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).

### **Equality Act 2010 Statutory Code of Practice (2011)**

7.10 The Gender Recognition Act 2004 (GRA) provides that, where someone holds a gender recognition certificate, they must be treated according to their acquired gender. Trans people should not be routinely asked to produce their Gender Recognition Certificate as evidence of their legal gender. Such a request would compromise a transsexual person's right to privacy. If a service provider requires proof of a person's legal gender, then their (new) birth certificate should be sufficient confirmation.

7.11 Under the Act 'gender reassignment' is a personal process (that is, moving away from one's birth sex to the preferred gender), rather than a medical process

7.12 The reassignment of a person's sex may be proposed but never completed; the person may be in the process of reassigning their sex; or the process may have happened previously. It may include undergoing the medical gender reassignment treatments, but it does not require someone to undergo medical treatment in order to be protected.

## **8 EQUALITY IMPACT ASSESSMENT (EIA)**

8.1 Where some differential negative impact has been identified, mitigating actions have been put in to place to ensure where cases involve vulnerable individuals all evidence is taken into consideration in making decisions.

8.2 To ensure the accurate implementation of this policy, legislation and guidance along with the Proud Network have been consulted, with their suggestions for improvement implemented. Alongside this, advice from the Proud Network will be available for staff implementing the policy. This policy will not have a negative impact upon any trans customers.

## **9 OWNERSHIP, MONITORING & REVIEW**

9.1 The Policy is owned by the Operations Directorate and will be monitored by the Operations Management Team.

9.2 The Policy will be reviewed in line with the Operations Management Policy and Procedure Review Schedule.