

Succession and Assignment Policy

1.0 Introduction

One Manchester (OM) is committed to providing an efficient and effective service to its customers which includes acknowledgement of the rights provided within the current legislation and provision of advice on them, whilst also satisfying housing need and aspiration through offering choice in housing location. This policy covers the way in which tenancies can be 'taken over' via Succession and assignments.

2.0 Purpose

The purpose of this policy is to ensure that all successions and assignments are completed within the terms of the tenancy agreement and relevant legislation.

3.0 Scope

The policy details One Manchester's approach to tenancy successions and assignments within tenancy management.

This policy does not supersede any tenancy agreement.

4.0 Succession

Tenancy Succession is a term used to describe the process whereby a relative, partner – including same sex partners - or surviving spouse (husband or wife) inherits a tenancy following the death of the tenant. The person who inherits the tenancy enjoys the same rights as the previous tenant and is referred to as a 'successor'.

Succession to Assured and Assured Shorthold Tenancies

- 4.1 This policy is used in accommodating relatives/partners who are left in occupation of a property following the death of a tenant.
- 4.2 Succession can only occur once in law. This means, for example, that when a tenancy passes from a husband to his wife (following his death), a child who has lived in the family home for most of their life will not be able to succeed to the tenancy and subsequently may have possession proceedings brought against them. A family only has one succession right which is used up when the tenancy passes from one to another as in the above example.

5.0 Succession Rights

- 5.1 On the death of a tenant and as long as the tenant is not a successor (as defined in 5.2) the following persons may have a right to succeed to a tenancy:
 - a) the tenant's spouse or a partner provided that they occupied the premises as their only or principal home at the time of the tenant's death under section 17 of the Housing Act 1998. This right occurs automatically and is known as a statutory succession

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- b) any surviving joint tenant(s) if they occupied the property as their only or principal home at the time of the tenant's death. This will occur even if the tenant was already a successor under the rules of survivorship.
- c) if the tenant has no surviving spouse or joint tenants, a member of their family (as defined in Section 113 Housing Act 1985) or a partner of the same sex may succeed as long as:
 - they occupied the premises as their only or principal home and
 - they lived with the tenant throughout the period of six months ending with the tenant's death (this condition does not apply to partners of the same sex) and
 - they satisfy OM (acting reasonably) that they have a right to have the tenancy vested in them under the tenant's will or intestacy and
 - they notify OM in writing of their claim to succeed within six months of the tenant's death and
 - they apply for a Grant of Probate and/or Letters of Administration and/or seek to have the tenancy vested in them under the tenant's will or intestacy within six months of the tenant's death.

5.2 A tenant is a 'successor' for the purposes of this policy if they:

- a) are a person who was a joint tenant and have become a sole tenant or
- b) are a spouse in whom the Tenancy was vested under Section 17 Housing Act 1988 or
- c) fall within the definition of successor set out in Section 17(3) Housing Act 1988 or
- d) became the tenant under the will or on the intestacy of a former tenant of the premises or
- e) were granted the Tenancy under a right of succession granted by OM under any Tenancy Agreement.
- f) became the tenant as a result of an assignment other than in the circumstances set out in items g) and h) below
- g) became the tenant as a result of a Court Order under Section 24 of the Matrimonial Causes Act 1973 and the other party to the marriage was a successor; or
- h) became the tenant under the Right to Exchange and was a successor under a previous tenancy

6.0 Special Succession Rights

- 6.1 If the tenant is not a successor as defined in Section 5.2 of this policy and if on the tenant's death there is no person who is able to succeed under Section 5.1 or 5.2 (a) to (d), and if the tenancy agreement provides for it, OM may agree to a contractual succession if a person:

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- is a member of the tenant's family (as that expression is defined in Section 113 of the Housing Act 1985); and
- lawfully occupied the premises as their only or principal home at the time of the tenant's death and lawfully resided with the tenant throughout the period of six months ending with the tenant's death; and
- makes a claim in writing to OM within three months of the tenant's death.

6.2 Then OM will end the existing Tenancy and may enter into a new Tenancy with such person either of the property or, at OM discretion, of other property that OM considers to be more suitable. E.g. adapted property or under occupying the current property.

6.3 In circumstances where OM is looking to offer an alternative property and until this property is found the successor tenant (person resident in the property seeking to become the tenant) is liable for mesne profit from the date the Notice to Quit expired. A mesne profit account will be set up in the name of the person applying until a suitable property is found. This is an account that is set up so rent can be claimed for continued use of the property.

6.4 If more than one person makes a claim under this section, OM, in the absence of agreement between such claimants, will, in its absolute discretion, select the person who may pursue the claim.

7.0 Persons left in Occupation without succession rights

7.1 Any person/s left in occupation of a property by the previous tenant who does not qualify as a successor in sections 5 and 6 will not be offered the tenancy of that property and they will be asked to leave.

7.2 If the person left in occupation fails to vacate the property legal action will be taken.

8.0 Assignment

8.1 An assignment is the formal transfer of a legal interest in land. In a housing context, it is the transfer of an assured tenancy during the lifetime of the tenant.

8.2 An assignment does not mean that a new tenancy is signed but that the existing (original) tenancy is transferred to somebody else.

8.3 There are 3 types of assignment:

- Assignment to potential successor (including the conversion of a joint tenancy to a sole tenancy)
- Assignment in pursuance of a court order
- Mutual Exchange

8.4 In all cases, save where OM receives an order from a court transferring the tenancy from the original tenant to their spouse/cohabitee following divorce proceedings pursuant to the Family Law Act 1996, the transfer of the tenancy (i.e. assignment) takes place following the signing of a Deed of Assignment being completed by both parties. At no stage should a new tenancy agreement be signed.

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9.0 Termination of a Joint Tenancy by one Joint Tenant

9.1 A tenancy cannot be assigned from joint to sole.

9.2 When a relationship breaks down or one joint tenant leaves the property and one tenant decides to terminate the joint tenancy, the Place Delivery Manager may re-grant the same property to the tenant remaining in occupation unless that tenant was the perpetrator of domestic abuse. However, the tenant will be advised to seek independent legal advice as there may be implications for their tenancy rights under any new tenancy agreement. In certain circumstances, and at the discretion of the Head of Place, a tenancy will not be re-granted but one direct offer of suitably sized accommodation will be made.

10.0 Assignment to a potential successor

10.1 Where OM receives an assignment request, or they wish to convert the tenancy to a joint, this can only be done to a potential successor. As such reference should also be made to the Succession Policy above and the tenancy agreement.

10.2 Requests to assign may come from current joint tenants, spouses/civil partners and family members as defined above. Requests to assign the tenancy to anyone other than these qualifying people will be refused.

10.3 Following an assignment the assignee will become the tenant of the OM under the same tenancy agreement as the previous tenant. Assignments to potential successors will only be permitted in certain circumstances which will differ depending on the tenancy agreement signed.

10.4 In all cases the tenant requires the OM's written permission to assign a tenancy and applications can be refused if it is not in the interest of OM to grant them.

10.5 There may be situations where it is not in interest of OM to grant the assignment. Examples of this are (this is not an exhaustive list):

- Where the property is too small or large for the family member(s) who will be left in occupation once the tenant moves out;
- Where the property is adapted and no-one left in occupation requires the adaptation;
- Where legal action on the tenancy is in progress or is being considered;
- Where the potential assignee is not financially able to afford the property;
- Where there is a risk of rent arrears not being cleared (see below);

11.0 Mutual Exchanges

11.1 A tenant of OM who wishes to exchange their property with that of another tenant has the right to do so, if the right is expressed in their tenancy agreement.

11.2 OM can refuse the request to exchange on the basis of the Grounds set out in Schedule 3 of the Housing Act 1985 following:

- Either party to the mutual exchange is subject to a current Possession Order;

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- A Claim for Possession based on one or more of the discretionary Grounds for Possession as contained in Schedule 2 Housing Act 1988 (as amended), has been begun against either party to the mutual exchange or a Notice Seeking Possession, including one or more of the said discretionary Grounds for Possession, has been served on either party to the mutual exchange and it is still in force. The said Grounds include 10, 11, 12, 13, 14, 14A, 15 or 17.
- A Claim for Possession based on the absolute ground for possession has been begun against either party to the mutual exchange or a Notice Seeking Possession, including the absolute ground for possession, has been served on either party to the mutual exchange and it is still in force;
- A 'relevant order' which includes an anti-social behaviour Injunction, an Anti-Social Behaviour Order, an Injunction under s.1 of the Anti-Social Behaviour, Crime and Policing Act 2014 is in force against either party to the mutual exchange or is in force against any person residing with either party to the mutual exchange;
- A Suspended Possession Order based on anti-social or riot-related behaviour or a Demotion Order is in force against either party to the mutual exchange;
- The property of either party to the mutual exchange is subject to a Closure Notice or Order under Chapter 3 of Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014;
- The property which the assignee would move into after the mutual exchange is substantially more extensive than is reasonably required by them;
- The extent of the property which the assignee would move into after the mutual exchange is not reasonably suitable to their needs or the needs of their family;
- The property which the assignee would move into after the mutual exchange has been adapted for occupation by a physically disabled person and neither the assignee or any person residing with them needs the specific adaptation.
- The accommodation was let to the tenant in consequence of employment, relating to non-housing purposes;
- The assignment would conflict with the purposes of a specialist landlord (housing association or housing trust) who lets properties for occupation by persons whose circumstances (other than merely financial) make it especially difficult for them to satisfy their need for housing and if the assignment went ahead there would no longer be such a person residing in the property;
- The accommodation is sheltered accommodation;
- The property is managed by a housing association and the assignee refuses to become a member of the housing association.

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- 11.3 Mutual exchanges are carried out by deed of assignment. No tenant can go ahead with a mutual exchange without the permission of OM. Any tenant who does so without permission may be required to move back to their previous home and recharged for any costs.
- 11.4 OM is a member of House Exchange. House Exchange is for social housing tenants (in rented property) who want a property swap or a mutual exchange. OM subscribes to the House Exchange website and allows all tenants to access this service free of charge, to enable the tenant to find suitable matches.
- 11.5 All tenants finding suitable matches using the House Exchange website (www.houseexchange.org.uk) will be required to submit the details to the OM who will assess the application under the agreed criteria.
- 11.5 OM can at its discretion provide conditional consent.

12.0 Assignment pursuant to a Court Order

- 12.1 In certain matrimonial, civil partnership or Children Act proceedings the court can order one party to assign the tenancy to another party. This transfer of tenancy can be ordered under the following acts
- Matrimonial Causes Act 1973- Section 24(1)
 - Matrimonial and Family Proceedings Act 1984
 - Children Act 1989- Schedule 1
 - Family Law Act 1996

13.0 Method and approach

- 13.1 This policy should be read in conjunction with the procedures and guidance notes and the following complimentary policies including:
- Anti-Social Behaviour and Hate Crime
 - Domestic Abuse
 - Manchester City Councils Allocations
 - One Manchester's Allocations
 - Adults at Risk of Harm
 - Tenancy
 - Starter tenancy

14.0 Responsibility

- 14.1 The Executive Director of Customers and Communities is responsible for ensuring this policy complies with legislative requirements.
- 14.2 Managers and staff who deal with successions and exchanges of properties are responsible for implementing this policy.

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15.0 Equality

- 15.1 One Manchester will ensure that this policy is applied fairly to all our customers. We will not directly or indirectly discriminate against any person or group of people because of their race, religion, gender, marital status, sexual orientation, disability or other grounds set out in our Equality, Diversity and Inclusion Policy.
- 15.2 An Equality Impact Assessment has been carried out on this policy.
- 15.3 This Policy can be translated into various other languages at the customer's request or issued in Braille or larger print if required.

16.0 Monitoring, review and evaluation

In monitoring this policy, we will:

- Review every 3 years or sooner if changes to relevant legislation or Manchester City Council's Strategy determine that an update is required.

OM will monitor its performance in delivering this Policy to ensure that the service is delivered effectively.

- We will monitor customer satisfaction with tenancy management through satisfaction surveys.
- We will publish appropriate performance information in relation to the delivery of the Policy

17.0 Legislation

This policy has been written in accordance with relevant guidance and legislation, which includes:

- The Localism Act 2011.
- Manchester City Council's Strategy 2016-2025.
- Homes and Communities Agency Tenancy Regulatory Standards.
- Immigration Act 2014.
- S197 Housing and Regeneration Act 2008.
- Equality Act 2010.
- Human Rights Act 1996
- Housing Act 1988