

Policy Document



Homes for Haringey

Assignment Policy

ENFORCEMENT POLICY			
Author:	Lisa Griffin	Authorised by:	Sharon Morgan
Owned by:	Lisa Griffin	Issue No:	1
Effective from:	01/06/15	Next Review date:	01/06/17
Consultation Required?	No	List who was consulted	
EIA Required?	No. The 2014 Housing Allocations Policy was subject to an Equalities Impact Assessment.	EIA Completed	
Section:	Tenancy Management		
Ref. No:	ASSPOTM01	Applies to:	Tenancy Management



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2. PURPOSE OF THE POLICY

This document sets out Haringey Council's policy for existing tenants to pass on their existing secure tenancy to another person. No new tenancy agreement is created. Homes for Haringey have delegated responsibility from the Council to consider and approve applications for assignment.

The policy reflects the law set out in the Housing Act 1985, which over-rides the policy where there is conflict.

Except where indicated, the law set out in this policy applies equally to introductory and secure tenancies.

This policy sets out which persons are qualified to take over a tenancy on a request by the existing tenant to assign their tenancy and the circumstances where an assignment is not legally possible.

It is important to note that:

- Authorisation is required by the Council
- If an assignment is made in compliance with the law, Homes for Haringey will not normally refuse permission unreasonably.
- The original tenant must still be living in the property before the assignment has taken place.
- An unauthorised assignment that does not comply with the law as set out in this document has no legal effect.
- Joint secure tenants cannot legally assign their tenancy other than as a result of an order of the Court (see below).

Reasons for not allowing assignment of tenancy

There are a number of reasons why we may not allow you to pass your tenancy to another person:

- You received your tenancy when the previous tenant died or if they passed it on to you.
- If you have a court order against you then you may have lost the right to pass on your tenancy to someone else, in addition to other tenancy rights.



- If you have caused anti-social behaviour or harassment we might be in a position to refuse your request.
- If you are currently in the process of buying your home or moving to another Council property or if you have been nominated to another landlord for housing or if you are in the process of doing a mutual exchange with another tenant.

If there are arrears on your rent account?

If you apply to pass your tenancy to someone else we will ask you to clear your rent account.

If you are not able to clear your rent arrears we will only allow you to pass on your tenancy to someone else if you make an agreement, acceptable to Homes for Haringey, to clear the debt by installments or if the assignee gives their written agreement to take responsibility for the rent arrears. When this happens the arrears are added to the assignee's new rent account.

3. SCOPE

From Homes for Haringey becoming aware that a tenant may be in prison, hospital, rehabilitation or residential care to a decision on whether the surrender of tenancy is a viable option or any action to repossess the property is needed.

4. BACKGROUND

4.1 Background/legal framework

The Housing Act 1985 allows the assignment of tenancies to take place in three ways:

- Assignment by way of mutual exchange (applicable only to secure tenancies). See the Mutual Exchange Policy.
- Assignment pursuant to a property adjustment or financial relief order made by a Court.
- Assignment to someone who would be eligible to succeed on the death of the tenant; a tenant who is him/herself a successor cannot therefore assign a tenancy, and nor can joint tenants.

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The assignment must be by way of a Legal Deed of Assignment (except in relation to transfers pursuant to Court Order).

The assignor will be liable for any arrears on the rent account at the date of assignment. The assignee will be joined in any outstanding legal action such as Notices of Seeking Possession in force against the assignor and for any breaches of the tenancy conditions at the date of assignment.

5. POLICY

5.1 Policy statement

The rules on which persons can be assigned a tenancy are the same as for succession. A request for an assignment by a tenant will be considered in the context of the statutory provisions below:

Who can become an assignee?

The following members of a household have a statutory right to the assignment of a life time secure tenancy:

For tenancies granted before 1 April 2012:

- Spouse, civil partner or persons living as if married or civil partner (occupying the property as their only or principal home with the assignor at the date of the assignment)
- Eligible family members: (a) a parent or grandparent (b) a child or grandchild (c) a brother or sister (d) an aunt or uncle (e) a nephew or niece (f) a stepchild or illegitimate child (but not foster children)

The Housing Act 1985 states that relationships by marriage, half-blood (e.g. step-children) or by adoption are treated the same as relationships by whole blood.

Other than a spouse or civil partner the person applying for the assignment must have lived continuously in the property as their principal home for twelve [12] months before the assignment request by the tenant.

For tenancies granted after 31 March 2012:

Only spouses, civil partners or partners living as if married or civil partner (occupying the property as their only or principal home with the assignor at the date of assignment)

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Under-occupation

Under-occupation by the assignee does not give the Council a right to possession. However, it is Council policy to encourage such assignees to move to more appropriate accommodation referencing Haringey Council financial incentives and changes brought in by the Welfare Reform Act 2012 reducing housing benefit for bedrooms in excess of housing need.

Adapted properties

If the property has been adapted for use by a physically disabled person and such a person is no longer resident and it is required for use by another such person, then the assignee should be encouraged to move to more appropriate accommodation; if the assignee refuses to do so then a Ground 13 Notice of Seeking Possession may be served and possession obtained and alternative accommodation provided.

Ineffective assignments

An assignment can only happen once.

In the following circumstances the assignment will be ineffective:

- tenants/assignors are Joint Tenants
- tenant/assignor had previously succeeded to the tenancy (including a person who was joint tenant and later became a sole tenant after the other joint tenant died)
- tenant/assignor had been living alone
- tenant/assignor had left the property and was not using it as their only or principal home
- tenant/assignor had left the property and been admitted to hospital or a residential home for long-term care or treatment*
- there had previously been an assignment of the tenancy or property adjustment/financial relief order
- the assignee cannot establish their relationship to tenant or their period of residence at the address.

Non-Statutory Assignment

Homes for Haringey does not have discretion to agree a non-statutory assignment outside these conditions. Exceptional cases may be referred to the Decisions Panel. Refer to the Exceptions criteria.

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Post Assignment Residency

Assignment usually implies that the tenant is leaving the property. However, in some cases the tenant chooses to remain in the property. Once the assignment is completed, the tenant has formally transferred their tenancy including their rights to remain in the property to their nominated assignee. In this circumstance, they have lost their own security of tenure as a result of their own act or omission. In the event that the assignee requests the former tenant to vacate the accommodation, the assignee could be seen as making themselves intentionally homeless. If the assignee is threatened with homelessness advice should be sought from the Housing Advice and Options Team.

5.1 Implementation

If the applicant has left the property Tenancy Management staff will take action to recover the property. The (formerly secure) tenant remains the tenant so the tenancy must first be terminated by Notice to Quit. If on expiry of the Notice to Quit the purported assignee remains in occupation they will also arrange for an "Unauthorised Occupant" account to be established and will collect an unauthorised occupant (use and occupation) charge equal to the weekly rent from the occupier(s) for the period of recovery action

There is no right of appeal.

5.2 Enforcement and recharge

If the applicant has left the property Tenancy Management staff will take action to recover the property. The (formerly secure) tenant remains the tenant so the tenancy must first be terminated by Notice to Quit. If on expiry of the Notice to Quit the purported assignee remains in occupation they will also arrange for an "Unauthorised Occupant" account to be established and will collect an unauthorised occupant (use and occupation) charge equal to the weekly rent from the occupier(s) for the period of recovery action.

5.3 Service standards

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Outcome within 20 working days from receipt of all verified supporting evidence.

5.4 Value For Money

Value for Money will be achieved by correct application of this policy and ensuring properties go to those on the waiting list as they should. Robust adherence to policy and procedure will minimise any loss of rent or equivalent charge.

5.5 Equalities

The 2014 Housing Allocations Policy was subject to an Equalities Impact Assessment.

6 Policy Control

This is a Haringey Council policy. The Deputy Director of Operations in Homes for Haringey will monitor implementation and performance.

Revision	Date	Description of changes	Was a consultation carried out? Who?	Reviewed by
1.0	25/06/15	Initial Release	No	Lisa Griffin