



Shropshire Council
Legal and Democratic Services
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Date: Date Not Specified

:

Committee:

Decision Making Session by Portfolio Holder for Planning, Housing and Commissioning (Central)

Date: Friday, 28 March 2014

Time: 10.00 am

Venue: Room 1S 131, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

You are requested to attend the above meeting.
The Agenda is attached

Claire Porter
Head of Legal and Democratic Services (Monitoring Officer)

Members of Decision Making Session by Portfolio Holder for Planning, Housing and Commissioning (Central)

Malcolm Price

Your Committee Officer is:

Penny Chamberlain Principal Committee Officer

Tel: 01743 252729

Email: penny.chamberlain@shropshire.gov.uk

AGENDA

1 ST&R Housing: Succession and Assignment Policy (Pages 1 - 14)

The Portfolio Holder for Planning, Housing and Commissioning (Central) will consider a report by the Communities and Housing Policy Team Leader on ST&R Housing: Succession and Assignment Policy.

Contact – Nick Wood: 01743 252585

Note: **Portfolio Holder Decision Making Sessions are not open to the public.** However Members of the public are welcome to submit a request to address or ask a question of the Member making the Portfolio Holder decision. Any request should be submitted in writing to the Chief Executive at The Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND by no later than 2 clear working days before the proposed Member Session. This is to ensure that the individual member has sufficient time to decide whether or not to hear such persons and if so the arrangements to be made. If you would like further details please telephone 01743 252729 or email penny.chamberlain@shropshire.gov.uk



Portfolio Holder Decision
Making Session and date/time

Cllr Malcolm Price

28th March 2014 at 1000hrs

Item

Public/Private

REPORT TITLE – SUCCESSION AND ASSIGNMENT POLICY 2014 - 2016

Responsible Officer Nick Wood

Email: nick.wood@shropshire.gov.uk

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1. Summary

1.1 Shropshire Towns and Rural Housing (ST&RH) is an Arms Length Management Organisation, commonly referred to as an ALMO, set up in April 2013 to manage the Councils housing stock in Bridgnorth and Oswestry and to manage the Councils Housing Revenue Account (HRA).

1.2 This policy produced by ST&RH, refers to the succession and assignment of the Council's housing stock from 1st April 2014.

1.3 Succession is the process by which a tenancy is passed to another person on the death of the original tenancy holder. This policy identifies our process for dealing with all successions and assignments.

1.4 This policy has been written in line with relevant current legislation. Unless there are changes to legislation beforehand, the next review of this policy is due in 2016.

2. Recommendations

2.1 That the Portfolio Holder for Planning, Housing and Commissioning (Central) notes and agrees to the content of the Succession and Assignment Report 2014 – 16 (appendices 1).

Reasons for decision:

To ensure the succession and assignment of council owned property complies with national legislation, statutory guidance and good practice and contributes to sustainable communities.

REPORT

3. Risk Assessment and Opportunities Appraisal

3.1 This policy has been written to fully comply with the relevant current legislation.

4. Financial Implications

	<i>Costs</i>		<i>Income / Savings</i>	
	<i>Revenue</i>	<i>Capital</i>	<i>Revenue</i>	<i>Capital</i>
<i>First financial year</i>				
<i>Full financial year</i>				
<i>One-off</i>				
<i>On-going annual</i>				
<i>Please provide a summary of how costs and income/savings values are calculated.</i>				
<i>Please provide a summary of how the net costs will be funded.</i>				

5. Background

5.1 Succession is a right given under the Housing Act 1985 for secure tenants to pass on their tenancy following their death.

5.2 Tenants with an introductory tenancy also have the right of succession under the Housing Act 1996, providing that the successor occupied the tenant's property as their only or principal home immediately before the death of the tenant. Any qualifying successor would succeed to the remaining period of the introductory tenancy, which would then become secure at the end of that period.

5.3 There can only be one succession of a tenancy. This means that if the deceased tenant was already a successor in his or her own right, the tenancy cannot normally be passed on again to another person. On receiving a succession claim, we will carry out checks to establish whether or not there has already been a succession of the tenancy.

5.4 An assignment is where a tenancy has been legally transferred. Secure tenants who have not succeeded to the tenancy themselves, have the right to assign (pass) their tenancy to their spouse or a family member provided that the spouse or family member would have qualified to succeed to the tenancy if the tenant had died immediately before the assignment. An assignment must be done by a legal document called a Deed of Assignment. If the assignment proceeds, the deed will be drawn up by Housing Services. Examples of where a tenant may wish to assign a tenancy to someone include when a person moves into a residential care home or moves to another country. Assignments use up the right of succession and the successor cannot then pass on the tenancy.

5.5 The courts can also order an assignment between married partners and civil partners as a result of divorce proceedings, or dissolution of a civil partnership. This is called a 'tenancy transfer'. Housing Services will abide by any assignment made by the court. Legal advice from the Citizens Advice Bureau or a solicitor should be sought on assignments as there are a number of matters to consider. For example losing the right to occupy the property and the council might not have a subsequent duty to re-house someone in the event of becoming homeless. Assigning a tenancy could also have an effect on the household's entitlement to housing benefit.

6. Additional Information

None

7. Conclusions

This is a report for the Portfolio Holders decision.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information):
Key Decision: Yes/No
Included within Forward Plan: Yes/No
If a Key Decision and not included in the Forward Plan have the General Exception or Special Urgency Procedures been complied with: Yes/No
Name and Portfolio of Executive Member responsible for this area of responsibility: Cllr Mal Price
Local Member:
Appendices: Shropshire Towns and Rural Housing Report

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

- I have to declare an interest in respect of this report

Signed Date

NAME:

PORTFOLIO HOLDER FOR:

(Note: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out in the report, I agree the recommendation(s) in the report entitled

Signed

Portfolio Holder for

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and pro-forma is returned to Democratic Services for processing.

Additional comment :

.....

.....

Note: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, Head of Legal and Democratic Services, Chief Executive and the Head of Finance, Governance and Assurance (S151 Officer) and, if there are staffing implications the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Portfolio Holder: Your decision will now be published and communicated to all Members of Council. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication.

SHROPSHIRE TOWNS AND RURAL HOUSING

SUCCESSION AND ASSIGNMENT POLICY		
STATUS	VERSION 2	
APPROVED BY:	Shropshire Towns and Rural Housing Board	Date
		Date
DATE DUE FOR REVIEW	June 2016	
OUTCOME OF REVIEW	N/A	
SERVICE RELATIONSHIPS:	ST&RH, SHROPSHIRE COUNCIL, HOMEPOINT PARTNERS	
LINKED POLICIES	LETTINGS POLICY, ALLOCATIONS POLICY, SHROPSHIRE COUNCIL FRAUD POLICIES	
POLICY OWNER:	MARTIN WHITELEGG	
KEY PERFORMANCE AREAS:	LETTINGS, VOID TURNOVER TIMES, INCOME COLLECTION, TENANCY FRAUD, UNDER OCCUPATION, OVERCROWDING	

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POLICY STATEMENT

Succession is the process by which a tenancy is passed to another person on the death of the original tenancy holder. This policy identifies our process for dealing with all successions and assignments.

This policy has been written in line with relevant current legislation. Unless there are changes to such legislation beforehand, the next review of this policy is due every four years.

DEFINITIONS

The following definitions apply to this policy:

- **Statutory Succession** is the transfer of a tenancy (not a property) to another (qualifying) person upon the death of a tenant.
- **Qualifying Person** is someone that meets the relevant criterion in order to succeed or be assigned an existing tenancy.
- **Assignment** is when a living tenant transfers the rights of their secure tenancy (not a property) in full to a (qualifying) person.
- **Tenancy** is any tenancy between a secure, flexible or introductory tenant and Shropshire Council.
- A **Tenant** is anyone who has a Council tenancy with Shropshire Council.
- **Sole Tenancy** is one tenancy that is held by one person.
- A **Joint Tenancy** is one tenancy that is held by two or more people, whereby each tenant is jointly and severally liable for the tenancy. Legally it is not possible to have more than four joint tenants.
- An **Introductory Tenancy** is a 12 month probationary tenancy, which offers tenants limited rights.
- A **Secure Tenancy** is granted to some tenants automatically after 12 months of being on an Introductory Tenancy, provided they have met the conditions of their Tenancy Agreement. Secure tenants have more rights with their tenancy. Prior to the changes introduced in the Localism Act 2011, all tenants were granted secure or life-time tenancies, after the completion of their Introductory Tenancy, providing they had met the conditions of their Tenancy Agreement.
- A **Flexible Tenancy** is a form of secure tenancy which lasts for a fixed term. It will be granted to most tenants after 12 months of being on an Introductory Tenancy. Tenants with a Flexible Tenancy will mostly have similar rights as other secure tenants.

- A **Demoted Tenancy** may be given to tenants of secure or flexible tenancies who have breached their Tenancy Agreement for anti-social behaviour and offers the same rights as an Introductory Tenancy. If a Flexible Tenancy is demoted, the Council will serve a Notice to the tenant prior to the end of the demotion period to make them aware that the tenancy is to become a flexible tenancy and specifying the fixed term.
- An **Equitable Tenancy** is one where the legal title is held in trust by an adult (or corporate entity).
- **Family Members** are defined under Section 113 of the Housing Act 1985 as being: A spouse, civil partner (as defined in the Civil Partnership Act 2004) or a partner with whom the tenant lived as husband or wife. For the purposes of this policy, couples who have separated and live apart do not qualify for succession unless they hold a joint tenancy and have not given up their rights. The tenant's parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece including step relation, half relation and an illegitimate child.
- A **Minor** is any child under the age of 18.
- A tenant may be classed as **vulnerable** as a result of age, mental illness or physical disability.
- **Under-occupied** means that a property is more extensive than is reasonably required.

RIGHTS TO SUCCESSION

Only one statutory succession is permitted.

Joint Tenancies

When a joint tenant dies, the tenancy will pass to the other joint tenant. This will count as the one succession allowed by the Housing Act 1985 (no-one will be able to succeed to the tenancy when the surviving joint tenant dies).

Where we have three or four-way joint tenancies and one of the joint tenants dies, the surviving joint tenants will be given the option of either:

- One of them succeeding the tenancy only; or
- Becoming joint tenants on a new tenancy.

Sole Tenancies

The arrangements for secure tenants whose tenancies pre-date the changes introduced by the Localism Act 2011 are slightly different to those for more recent tenants. In accordance with the Localism Act 2011, there is a right of one succession to a spouse or partner. In order to make the best use of the housing stock, following the death of a secure tenant, there is no statutory right of succession to other family members. This applies to tenancies which commenced after April 2012.

If the tenancy was issued before these changes in legislation; when a sole tenant dies, the tenancy may be passed to their spouse, civil partner, or partner. However, this is dependent upon there never having been a previous succession or assignment; and also that the successor was living at the property as their only or principal home.

Where there is more than one qualified successor, the spouse takes precedence over other relatives. If the tenant does not have a spouse, civil partner, or partner then the tenancy may be able to be passed to a member of the family that were living at the property consecutively for 12 months ending at the tenant's death.

The eligible relatives decide who should have the tenancy and if an agreement can not be made then Shropshire Towns and Rural Housing will make this decision. In some cases a court of law may need to decide.

As an existing tenancy is passed to another person, a new tenancy is not created, however the qualifying successor to a sole tenancy will need to sign a Tenancy Agreement confirming they accept the terms of the tenancy.

No Succession Rights

If there has already been a succession to the tenancy, then the person remaining in the property is not entitled to succeed. We can exercise our discretion to offer a new tenancy to people left in occupation on the death of the current tenant (of the existing property or an alternative property), but in exercising this discretion we will make sure that our Allocations Policy is not being undermined and in particular that we do not allow under occupancy of our properties to take place

We may exercise our discretion in the following circumstances:

- The applicant had taken up permanent residence with the deceased tenant at least 12 months before their death
- The health or needs of the applicant is such that it would be unreasonable for them to find alternative accommodation

In cases where an offer of alternative accommodation is unreasonably refused, we will start legal proceedings to gain possession of the property.

GENERAL RULES

The successor or potential successor(s) must notify the Council in writing within one calendar month of the tenant's death. Where applicable, this should include details of any agreement reached or on-going dispute relating to the succession to the property.

Where a qualifying successor, whose permanent place of residence was with the deceased tenant, but they are absent from the property on a temporary basis (such

as being in receipt of medical care), they are still entitled to succeed the tenancy as long as:

- They will not be absent from the property for more than six months; and
- Someone else accepts responsibility for paying the rent (and any other charges) on their behalf until they are able to return to the property.

RIGHTS TO ASSIGNMENT

We only allow tenants to assign their tenancy to another person who would qualify for statutory succession in the event of the tenant's death (this will count as the statutory succession).

Requests for assignment will be refused if:

- There are arrears on the tenancy;
- The tenancy is subject to legal action; or
- The property would not be suitable for the needs of the person to which the tenancy would be assigned.

Other Changes to Tenancies

The following changes to tenancies count as assignments of tenancy but are not classed as a right of succession:

- Swapping tenancies by way of mutual exchange with a tenant from another social landlord; and
- Changing a tenancy from joint to sole due to a Property Adjustment Order.
- Tenants with an existing social tenancy will be given a tenancy with no less security where they choose to move to another social rented home by way of mutual exchange. To achieve this, in cases where:
 - At least one tenant who wishes to transfer has a secure tenancy which began before April 2012
 - At least one of the tenants has a flexible tenancy

The exchange must be done by surrender and granting a new tenancy. In other cases, mutual exchanges will take place by Deed of Assignment. This means that each party will "take over" the tenancy of the other.

We can refuse an exchange where at least one tenant has a fixed tenancy term of less than two years.

An unauthorised assignment is a breach of tenancy and we will take legal action against any persons who are unlawful occupiers without security of tenure. The

tenant will be liable for any costs associated with such action. If the tenant is deceased, please refer to general rules.

PROPERTY RIGHTS

If the tenancy passes to someone other than a joint tenant and this results in the property being under-occupied, the successor will be offered smaller accommodation, suitable to their needs, when it is available.

Where the property is designed or adapted for a person with disabilities or it is sheltered accommodation for the elderly and the person entitled to the succession does not require such accommodation, then that person will be required to transfer to a more suitable property, which should take into account considerations such as property size, welfare reform implications and location.

If either request to move is refused then we will start legal proceedings to recover possession of the property.

VULNERABLE TENANTS

If a succession would result in a tenant who is vulnerable being in a property unsuitable for their needs, if possible, we will offer suitable alternative accommodation when it becomes available.

Succession for Minors

By law, minors have the same statutory succession rights as individuals over 18. However, as minors, they may be regarded as vulnerable and assessed by the Shropshire Council's Children and Young People's Services for any risks and support requirements as well as any measures put in place to address them.

Minors under 18

When there is a statutory succession to a tenancy, the minor will become the tenant in equity. The minor will be bound by the terms of the original agreement before the succession took place. We will require a third party to act as guarantor in respect of a tenancy for a 16 or 17 year old. The guarantor, who may be the Children and Young People's Services, a voluntary organisation or an individual may also act as a trustee and litigation friend'. All correspondence relating to the tenancy sent will be copied to the guarantor until the minor turns the age of 18. The tenancy will transfer to the minor upon their 18th birthday.

Minors under 16

In addition to the conditions for minors under 18, Children and Young People's Services will need to make sure that the minor and any dependents in the property are cared for at the property offered. To fulfil the occupancy condition, a carer must agree to take custody and move in to the premises as their principal home. The carer

will act as the minor's guarantor. We will grant the succeeded tenancy in trust to the carer until the minor's 18th birthday, upon which the tenancy will be transferred to the entitled person.

INFORMATION FOR SUCCESSORS

In the case of a Joint tenant successors are responsible for any arrears. The person who succeeds to the tenancy becomes responsible for any outstanding rent arrears on the property.

In the case of a sole tenancy the person who succeeds to the tenancy becomes responsible for any outstanding rent arrears on the property where a suspended or postponed possession order is in existence and it is a condition that the arrears are cleared by instalments.

Only tenants succeeding a joint secure tenancy will become a secure tenant. A person succeeding to an introductory tenancy will become an introductory tenant for the remainder of the introductory tenancy's original 12-month probationary period. They will then become a secure tenant as long as they have met the conditions of the Tenancy Agreement.

Anyone succeeding a secure tenancy will have the same rights as the previous tenant.

Anyone succeeding a flexible tenancy will remain as a flexible tenant and the end date will remain the same as was specified at the beginning when the tenancy was granted to the original tenant.

For the purposes of this policy, anyone succeeding a Demoted Tenancy will be classed as an Introductory Tenant.

UNAUTHORISED OCCUPANTS

Where there is no legal right to succession of the property, we will pursue legal action to gain possession of the property within six months of being informed of the tenant's death.

Any person remaining in the property until the Court issues a Possession Order will not hold a tenancy of the property, but will be liable for use and occupation charges.

GARAGE SUCCESSION

Where a garage or garage ground rent plot tenancy has ended because the tenant has passed away, the tenancy will be offered to a surviving member of the tenant's household in line with this policy. If this tenancy is declined, or after ten working days has not been accepted, the garage will be treated as a normal void and where applicable will be re-let to the next appropriate person on the waiting list.

SUPPORT

Shropshire Towns and Rural Housing and its partner agencies will provide support services to both qualifying and non-qualifying successors of the tenancy and their families, either directly or through other agencies. Support will include:

- Housing and tenancy advice; and
- Referrals to other agencies or services for non-housing support such as emotional support, advocacy and counselling services.

Potential successors have the right to challenge any decision we make about the succession of a tenancy. Complaints can be channelled through the formal complaints process and independent advice sought from other agencies for example the Citizens Advice Bureau; details are available on Shropshire Towns and Rural Housing website. Complaints can also be made in writing to Shropshire Towns and Rural Housing, Spruce House, Sitka Drive, Shrewsbury Business Park, Shrewsbury ST2 6LG or by phone 01743 210202 or reported directly to any member of staff.

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