

Tenancy Changes Policy

1 Purpose

This policy sets out the approach taken by Metropolitan Thames Valley Housing (MTVH) when considering requests to make changes to an existing tenancy.

For information on passing on or inheriting a tenancy following the death of a named tenant, please refer to our **Succession Policy**. For information on exchanging properties with another housing association or council tenant, please refer to our **Mutual Exchange policy**.

2 Scope & Definitions

The policy and supporting procedures/documents apply to all MTVH customers living in a socially rented property, including supported housing customers where MTVH is the landlord and manages the tenancy. It may also apply to former customers and potential new customers.

This policy does not apply to customers living in the following properties:

- Intermediate and Market Rent (requests will be considered in line with the relevant affordability criteria)
- Shared Ownership
- Leasehold

In this policy, a 'request to make changes to an existing tenancy' includes:

- Assigning or transferring your tenancy to another person.
- Removing a person from a joint tenancy.

MTVH does not allow additional tenants to be added to an existing tenancy.

Term	Definition
Assignment	<p>A legal process by which a tenant can transfer their tenancy to another person. On assignment, the assignor's legal interest in a property is passed to the assignee who takes over that interest and becomes the tenant. All the terms of the original tenancy agreement apply to both the new tenant and the landlord, including the amount of rent payable.</p> <p>A written Deed of Assignment, signed by both parties and witnesses, must be completed for it to be effective.</p>
Surrender & Regrant	<p>A process in which the existing tenancy is terminated, and a new tenancy is granted in place of the old one.</p> <p>This process can be used as a way of managing the 'transfer' of a tenancy where an assignment is prohibited, although technically the existing tenancy is replaced rather than transferred.</p> <p>As a new tenancy is granted, the terms and conditions may differ from the original tenancy, including the rent.</p>
Joint to Sole requests	<p>A request to remove one tenant from a joint tenancy whilst allowing the other tenant to remain living at the property.</p>
Transfer Orders	<p>A court order made under the Family Law Act 1996, the Matrimonial Causes Act 1973, the Children Act 2004, or the Civil Partnership Act 2004, requiring the transfer of a tenancy between parties.</p> <p>This includes where a joint tenancy is transferred into the sole name of one tenant, or where a tenancy is transferred to a former spouse, civil partner or co-habitant not named on the tenancy.</p>

	The type and wording of the court order will determine the process by which the transfer takes effect.
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3 Our Approach

3.1 When can a tenancy change take place?

MTVH will only consider requests to make changes to an existing tenancy in the following circumstances:

- Where there is a statutory or contractual right to assign the tenancy to another occupant.
- Where a court orders it as part of divorce, judicial separation proceedings, termination of a civil partnership or under the Children Act 2004.
- To remove one tenant from a joint tenancy and provide the remaining tenant with a sole tenancy.

3.2 Statutory Right to Assign

Customers with a secure tenancy have a statutory right to assign their tenancy to someone who would be eligible to succeed to the tenancy upon the death of the tenant. This only applies to sole secure tenancies, as a joint secure tenancy would automatically pass to the surviving tenant under the rules of survivorship, therefore there are no eligible successors.

To exercise this right, the assignment must take place before the original tenant moves out of the property, whilst it is still their only or principal home, otherwise the secure tenancy status is lost. The original tenant will remain responsible for any monies owed or other tenancy breaches which occurred before the assignment took place.

Only one statutory succession or assignment is permitted for the lifetime of the tenancy.

See our **Succession Policy** for more information about eligible successors.

3.3 Contractual Right to Assign

Assured tenants may have a contractual right to assign their tenancy to another occupant; their rights and any conditionality or limitations will be set out in their tenancy agreement. Where a tenancy agreement sets out specific conditions under which an assignment is allowed, no assignment can take place outside of these.

Where a tenancy agreement grants an assured tenant a right to assign their tenancy subject to our consent, we will not unreasonably withhold this. Some examples of grounds on which we might withhold consent include, but are not limited to:

- Arrears of rent or other charges associated with the tenancy.
- Other breaches of the tenancy agreement.
- The property is not appropriate for the housing needs of the prospective assignee.
- The property is not affordable to the prospective assignee.
- Local covenants or restrictions determining eligibility for a tenancy at that property.

Where a tenancy agreement does not specifically include or exclude a right to assign the tenancy, our consent is an implied condition of any assignment, which must not take place without our written consent. Any attempt to assign a tenancy without our written consent would constitute a breach of tenancy and MTVH will seek possession of the property under Ground 12 of the Housing Act 1988.

3.4 Assigning a tenancy to a minor (under 18)

In some cases, a minor may fulfil the criteria for a potential assignee, i.e., who a tenancy can be assigned to, however it is not possible for a minor to hold a legal interest in land, only an 'equitable' interest. In such cases, we will consider awarding an equitable tenancy, where the tenancy is granted 'on trust' to a third-party trustee, such as an adult relative/friend or social worker, until the assignee turns 18.

3.5 Transfer Orders

In a situation where a relationship breaks down, we advise couples who are permanently separating to seek independent legal advice in relation to tenancy issues. In the case of married couples or civil partners, matrimonial home rights would apply, regardless of whether the tenancy was in both spouses' or civil partners' names.

If the named tenant is no longer in occupation, the spouse or civil partner who remains at the property should apply to the court for the matrimonial rights to continue (or to resume, if already divorced).

The County Court has the power to transfer the tenancy to one tenant of a joint tenancy, or the former spouse, civil partner, or co-habitant of a tenant, by way of a transfer order made under the Matrimonial Causes Act 1973, the Children Act 2004, the Civil Partnership Act 2004 or the Family Law Act 1996.

In the case of a court ordered transfer of tenancy, the type and wording of the court order will determine the process by which the transfer takes effect, as well as who is responsible for any arrears which remain on the account immediately prior to the transfer.

3.6 Joint to Sole Requests

In the absence of a transfer order, we will consider requests for a joint tenant to be removed from the tenancy whilst the other tenant remains in occupation, where both parties agree and there have been no breaches of tenancy.

Where parties are not in agreement, MTVH will remain impartial and advise both parties to seek independent legal advice in relation to tenancy issues.

Where the tenancy agreement allows for an assignment to an existing tenant, requests will be considered in line with the provisions of the tenancy agreement, and we will manage the tenancy change via a Deed of Assignment.

Where the tenancy agreement does not allow for an assignment to an existing tenant, we will manage the tenancy change via a surrender and regrant, subject to the following conditions being met:

- There are no outstanding rent arrears, other monies owed, or other breaches of tenancy;
- The remaining tenant and their household are not under-occupying the property by more than one bedroom;
- The remaining tenant passes an affordability check; and
- Both tenants confirm in writing that they have sought independent legal advice and agree to the tenancy change.

Where the tenancy is in a sole name and the named tenant is leaving the property, we will consider a request to transfer the tenancy into the name of their former spouse, civil partner or co-habitant using the same criteria.

3.7 Right of Appeal

Applicants have the right to request a review of the reasonableness of a decision in accordance with the process outlined in this policy. All appeals will be referred to the Allocations Panel, who will make a decision based on individual circumstances. An appeal does not interfere with an individual's right to make a complaint to the independent Housing Ombudsman or to request an agency or organisation to make the appeal on their behalf.

4 Background legislation

Housing Act 1985

Housing Act 1988

Family Law Act 1996

Matrimonial Causes Act 1973

Children Act 1989

Civil Partnership Act 2004

5 Our commitment to Equality, Diversity and Inclusion

In implementing this policy MTVH will not discriminate against any colleague, customer, or stakeholder on the grounds of their gender, sexual orientation, gender reassignment status, ethnic origin, age, religious belief, disability, marital status, and pregnancy/maternity.

An Equality Impact Assessment has been completed for this Policy and is retained by the Policy Team.

6 Key Policy Information

Policy Owner	Regional Director (North London and Central)
Author	Head of Housing Services (Midlands and East), Letting Operations Manager
Approved by	Customer Services SLT
Effective from	December 2022
Approach to review	This policy & the associated procedures will be reviewed every 3 years or sooner if legislation, regulatory changes or operational need requires. Any amendments will be appropriately consulted on and signed off before being clearly communicated to customers and colleagues.
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