

ASSIGNMENT POLICY AND PROCEDURE

Responsible Officer

Director of Customer Services

Aim of the Policy

The aim of the policy is to outline the circumstances under which tenants may assign their tenancy to someone else. It aims to ensure that assignments take place in accordance with the relevant legislation and that the contractual rights and obligations of the tenancy agreement are adhered to.

Policy Scope

This policy applies to Phoenix tenants with assured tenancies.

The Policy

What is an assignment?

An assignment is a transfer of the tenancy during the lifetime of the tenant.

Succession is a different process, whereby the tenancy is transferred upon the death of the tenant. (See Succession Policy).

Under an assignment the person who transfers the tenancy (i.e. person A) is called the 'assignor' and the person to whom the tenancy is transferred (i.e. person B) is called the 'assignee'. The effect is that the Assignee becomes the tenant of the landlord, under the same agreement. Assignment must be done by way of Deed of Assignment.

What is the legal basis for assignment?

Section 15 of the Housing Act 1988, prohibits assignment for assured (non shorthold) tenancies unless there is an express contractual agreement by the landlord to allow assignment. Where there is an agreement by that the tenant can assign with permission, then permission will not be unreasonably withheld.

Phoenix tenancies set out in which circumstances a tenancy may be assigned or passed on to another person . In particular (Section B) states:

You are not allowed to assign or pass on the tenancy except in the following circumstances:

- a) by way of mutual exchange with a tenant of another Local Authority or Housing Association; or
- b) if ordered to do so by the court in matrimonial proceedings or in accordance with Schedule 1 of the Children's Act 1989; or

- c) to a person who would be qualified to succeed to the tenancy (such qualification being determined by the provisions of Section C of this Tenancy Agreement below) in the event of your dying.

In the situation (a) and (c) you must obtain our previous written consent to the assignment; this consent will not be unreasonably refused. In situation (b) we must be notified of the change and the details of the new tenant.

This means Phoenix must consider assignments by:

- Mutual exchange (see Mutual Exchange Policy).
- Assignment to an eligible successor (see Succession Policy).
- Assignment by Court order e.g. Property Adjustment Order-(see Relationship Breakdown Procedure).

Can there be an assignment?

The right to assign or mutually exchange a tenancy, as detailed above, only applies to assured tenants. Probationary tenancies do not have this right.

Tenants on temporary stay tenancies (including those housed under Part 7 Housing Act 1996 (as amended) duties e.g. homelessness of the Local Housing authority), probationary tenants have no right to assign.

A tenancy can only be assigned to a person eligible to succeed the tenancy once, so once it has been assigned, it cannot be assigned again, nor can there be a later succession. However, this does not limit assignment by mutual exchange, or court order.

Joint tenancies

One joint tenant cannot unilaterally assign their share of the joint tenancy to the other joint tenant, but both joint tenants can together agree to assign the whole of the tenancy to one of them or one tenant can release their interest in the tenancy. Because they are acting in agreement the joint tenants do not need to serve Notice To Quit, they simply both sign the relevant application forms and obtain consent from Phoenix.

Sole tenants

A sole tenant could request to assign their tenancy to someone who would have the right to succeed to their tenancy on the event of their death.

Grounds for Refusing an Assignment

There are no statutory grounds for refusal. However, our Regulatory Framework requires us to make best use of our housing stock to meet local needs therefore the matters set out below should be considered as grounds for refusal. Furthermore, if the proposed assignee qualifies for succession, they will become the tenant at a later stage and so Phoenix would need to be satisfied that there is a need for the tenancy to be assigned now.

The following are examples of where an assignment can be refused;

- Where the individual is a probationary tenant or a licensee.
- Where there is a possession order in force against the tenancy.
- Where there is a valid NOSP served for any breach of tenancy conditions.
- Where there are rent arrears above any discretionary limit which may be set from time to time by the Phoenix Board.
- Where the person who would be assigned the tenancy is evidenced to have committed ASB, harassment or domestic abuse against the tenant.
- Where the tenant sublets part of their home or takes in a lodger; without our previous written consent.
- Where the assignment will result in under occupation.
- Where the property is a specialised/adapted unit and the proposed assignee does not meet the criteria for this particular type of property. In such circumstances the officer will need to arrange for an assessment of the Assignor's needs to be carried out.

Assignment & Mutual Exchanges- (see Mutual Exchange Policy)

A mutual exchange can be completed by way of deed of assignment or surrender and re-grant of the tenancy. Please see mutual exchange policy.

Assignments following relationship breakdown- (see Relationship Breakdown Procedure)

Tenants can seek a Property Adjustment Order as part of a divorce settlement or a relationship breakdown under the Family Law Act 1996 or an order under the Matrimonial Causes Act 1973 or Civil Partnership Act 2004 or the Children's Act 1989.

If the Order itself makes clear the tenancy is transferred from one party to another, the order must be appended to the original tenancy agreement and changes made to the computer system. A deed of assignment does not need to be signed.

Sometimes a court can order require one party to assign the tenancy to another. If such an order is made, the tenancy is only transferred when the deed of assignment is executed.

Tenants should always be encouraged to obtain independent legal advice regarding a relationship breakdown.

Assignment at Hazelhurst Court

Assignment applications from spouses or partners residing within the Hazelhurst Court Extra Care scheme will be treated in the same way as occupants residing in designated elderly or disabled adapted properties. Assignment applications will be considered for a person who would be qualifying successor if and only when there is a suitability and/or verified support need that would 'best fit' the nature of the scheme.

No right of assignment will be granted to other family members as outlined in the tenancy agreement.

Affordable Rent Tenancies

Applications for assignment to affordable rent tenancies will be considered from a qualifying partner or spouse only who would be eligible to succeed under statutory grounds.

Monitoring and review

This policy will be reviewed every three years or sooner whenever there are changes to legislation, good practice or other learning.

We will ensure that:

- Targets are set and key performance indicators are recorded and monitored to ensure the service is delivered effectively and improvements identified.
- Staff receive relevant training and information to enable them to provide high quality services.
- Clear and concise information is published about our service and the standards that can be expected.
- Performance information is regularly reported to our Executive Team and Board.

Legislation

- Matrimonial Causes Act 1973
- Housing Act 1988
- Family Law Act 1996
- Civil Partnership Act 2004
- Equality Act 2010
- Localism Act 2011
- Data Protection Act 2018
- Coronavirus Act 2020

Reference to other documents and associated policies and procedures

Including:

- Phoenix Tenancy Agreement.
- Hazelhurst Court Tenancy Agreement
- Letters/forms in the procedure.
- Mutual Exchange Policy and Procedure.
- Succession Policy.
- Relationship Breakdown Procedure.
- Phoenix Standards.
- Data Protection Policy
- Equality & Diversity Charter

- ASB Strategy

Definitions

Term/acronym	Description
Resident	Includes tenants
Phoenix	Phoenix Community Housing.

Document Type:	Policy
Title:	Assignment Policy and Procedure
Author:	Housing Manager
Department Owned By:	Customer Services
Data Protection Impact Assessment:	No
Equalities Impact Assessment:	No
Approval Date:	2020-08-29
Approved By:	Board
Implementation Date:	2020-10-05
Status:	FINAL
Version No:	V4
Last updated:	2020-09-30
Issue Date:	2020-09-30
File Path:	CS Assignment Policy & Procedure FINAL V4 Sept 2020.docx