

South Kesteven District Council

Assignment Policy & Procedures

Policy Owner	Harrinder Rai
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1. INTRODUCTION

1.1 An assignment is where a tenancy is legally transferred to another person during his/her lifetime. The incoming tenant (the 'assignee') occupies the property under the same terms as the previous tenant (the 'assignor') and becomes the tenant, with the same rights and responsibilities of the assignor. It can transfer from an existing Council tenant to a new tenant or between existing Council tenants.

2. FORMS OF ASSIGNMENT

2.1 The following types of assignment will be considered:

- General Assignment, which is usually assignment to a potential successor (further details in the Succession Policy).
- An assignment by way of a mutual exchange with another South Kesteven District Council tenant or another Local Authority tenant or other Registered Provider tenant (further details in the Mutual Exchange Policy).
- By a court order following a relationship or matrimonial breakdown or orders relating to children. For example, a County Court Property Adjustment Order where an instruction is given by the courts to assign the tenancy from one parent to the other.

2.2 South Kesteven District Council may not consent to the assignment of a secure tenancy in the following circumstances:

- Where an introductory tenancy is in place;
- The assignor is not intending to live in the property permanently or as his/her main principal home;
- There are arrears of rent of at least 8 weeks or other breaches of tenancy and legal action has been taken to avoid the breach continuing, this can include letters before Court action;
- The assignee has former tenancy arrears;
- The tenancy is subject to Court action being taken by South Kesteven District Council and/or there is an Injunction Order or Possession Order in force.

- If the property is not suitable for the needs of the assignor (including, but not limited to, the size of the property if it caused overcrowding or under-occupation, or their disability needs, as recommended by an Occupational Therapist) ; or
 - The property is specially adapted and the adaptations are not required by the proposed new tenant or a member of their household.
- 2.3 Reference will be made to the tenancy agreement in all cases where a request for an assignment is received. Different agreements give tenants different rights with regard to assignments.
- 2.4 The Assistant Director-Housing will consider any discretionary succession cases for determination.

3 MARRIAGE AND CIVIL PARTNERSHIPS

- 3.1 If a tenant changes his or her name, there is no assignment. The tenant will simply be required to provide evidence of this name change with the original marriage/civil partnership certificate or a certified copy of such. The tenant's name will be changed on the rent account and a note will be made and attached to the tenancy agreement of the change of name and the date on which it came into effect.
- 3.2 There is no statutory provision for the assignment of a sole to joint-tenancy assignment. However, South Kesteven District Council will recognise the desire of an existing tenant to make such a request and will not reasonably refuse it, if we are satisfied that:
- The existing tenant, free from coercion or duress, agrees to the request, and
 - The existing tenant and his/her spouse or civil partner have lived together at the property for not less than 12 consecutive months prior to the date of the request, and the existing tenancy is not subject to an order for possession of the property, or no other steps have been taken against the existing tenant with regard to an alleged breach of tenancy and
 - The potential assignee can fully satisfy the requirements under Part VI of the Housing Act 1996.

4 RELATIONSHIP BREAKDOWN

- 4.1 South Kesteven District Council acknowledges there will be times when relationships breakdown and we will offer appropriate housing advice to tenants and/or spouse/partners.

- 4.2 This policy applies equally to circumstances with married and cohabiting couples; households with and without children; and all joint tenancies with varying circumstances such as family relationships and friends.
- 4.3 In any joint tenancy, if an agreement is reached over housing arrangements following a relationship breakdown, the tenancy may be assigned into a sole tenancy (see 6.1 of this policy). If the property is suitable for the needs of the family household, South Kesteven District Council will always aim to ensure the tenancy is assigned to the sole tenancy of the parent / guardian who will have main care and responsibility of any children, or other dependants or where the Court directs by way of a Court Order. Under these circumstances, South Kesteven District Council will provide suitable advice to the departing tenant.
- 4.4 In the event of a relationship breakdown and the tenancy is in a sole name, South Kesteven District Council recognises the right of the named tenant to remain at the property. Advice will be given to the departing person to find alternative accommodation.

5 PROPERTY ADJUSTMENT ORDERS (COURT ORDERED ASSIGNMENT)

5.1 The Matrimonial and Family Proceedings Act 1984 (as amended); and the Matrimonial Causes Act 1973 (as amended) both state that a Property Adjustment Order can be made when the Court:

- Makes a decree nullifying a marriage
- Makes a decree of judicial separation
- Makes a decree of divorce

The Courts can also make Orders for cohabiting couples and civil partners.

5.2 The Courts can order an actual transfer of the property under the Family Law Act 1996 (as amended) / Childrens and Families Act 2014, which can also allow for the transfer of any liabilities such as rent arrears, etc. In addition, under the Children Act 1989, the Court can make Orders in favour of children under 18, and allows a property to be assigned from one parent to another.

5.3 In a joint tenancy, South Kesteven District Council is not able to arbitrate between two partners who are unable to reach an agreement in a relationship breakdown. In these circumstances, both partners will be informed to seek separate independent legal advice from a family and/or housing solicitor or specialist advisor with a view to seeking to make such an Order. South Kesteven District Council will abide by any Property Adjustment Order made by the Court.

6 ASSIGNING A JOINT TENANCY TO A SOLE TENANCY

- 6.1 South Kesteven District Council do not give a contractual right on a standard joint tenancy (each request to assign will be dealt with on a case by case basis) for a joint tenancy to be assigned to a sole tenant. Where both joint tenants have reached an agreement for a joint tenancy to be assigned to one of the existing tenants, South Kesteven District Council will consider a written request. We will not unreasonably refuse such requests, as long as there are no breaches of tenancy and this does not contravene South Kesteven's Allocations Policy.
- 6.2 If a tenant is in breach of the secure tenancy, South Kesteven District Council may reasonably refuse or withhold its permission to the request until the breach is resolved. In some circumstances, South Kesteven District Council may permit the assignment under the following circumstances:
- The tenancy is not subject to a possession / money judgment/debt relief order, and/or;
 - The remaining tenant assumes full signed responsibility for the liability of the tenancy breach (with the exception of rent arrears) and/or;
 - Any decision is subject to a full property inspection and both parties agree to facilitate access for these purposes.
- 6.3 South Kesteven District Council will not transfer any outstanding arrears or debt to the tenant assigning to the tenancy. Any agreement reached between the joint tenants to address the breach/arrears is an informal agreement between themselves, which is not recognised by South Kesteven District Council, for the purposes of reaching a decision on the request to assign. Any outstanding rent will remain the liability of the joint tenants.
- 6.4 The only exception to this is if it is evident that the breach is deemed to be the sole responsibility of one party and it would not be reasonable to penalise the other party for the breach.
- 6.5 If this breach includes a possession order and/or a money adjustment order, it will remain the responsibility of both joint tenants to satisfactorily resolve this matter by addressing the breach and seeking to have any Orders discharged in the County Court.
- 6.6 An assignment right would be exercised when assigning a joint tenancy to a sole tenancy. In circumstances where one party to the joint tenancy is absent from the property, then the emphasis will be on the remaining party to seek a Property Adjustment Order via the County Courts.

7 ASSIGNING A SOLE TENANCY TO A JOINT TENANCY

7.1 South Kesteven District Council will consider a request for assignment from sole to joint tenancy for tenants and their spouse/civil partner.

7.2 South Kesteven District Council will use our discretion on deciding if consent will be given to a generational or intergenerational assignment of sole to joint tenancy.

- Generational (assignment between tenant & brother; sister; cousin or non- relation).
- Intergenerational (assignment between tenant with daughter; son; niece; nephew or grandchildren)

8 ASSIGNING A SOLE TENANCY TO SOLE TENANCY

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9 EQUALITY AND DIVERSITY

9.1 South Kesteven District Council is committed to delivering quality services to all, responding positively to the needs and expectations of all users to the service. We are dedicated to providing an accessible service for all applicants regardless of factors such as:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexuality

9.2 Equal Opportunities information will be requested from all applicants. This information will be monitored to ensure assignments are accessible to all client groups, that we promote equal opportunities, value diversity and tackle social exclusion.

10. MONITORING AND REVIEW

10.1 South Kesteven District Council is committed to continuous improvement of the services we offer. We will use several methods to monitor performance and customer satisfaction to ensure we continue to assist customers to exchange and that the customers' journey is transparent and efficient.

10.2 The review will ensure that South Kesteven District Council is in line with the most up to date Government legislation and meets the needs of our customers.

10.3 This policy will be reviewed annually after implementation in order to ensure it is aligned with any legislation changes and remains relevant.

11. APPENDIX 1 - PROCEDURES

1 Applying for assignment

- 1.1 Potential assignees will be interviewed and asked for details to confirm their claim to assignment. An officer will check that the person making the request has a legal right to assign. The potential 'assignee' will be invited to an interview and an 'Assignment of Tenancy Request and Approval Form' will be completed at the interview and scanned to the property file.
- 1.2 All personal data collected as part of a housing application will be used for the purpose of that application and, in addition, to update our records as per our legal duty under the Data Protection Act 2018).
- 1.3 The following information is required:
- photo ID
 - proof of residency, e.g. bank statements, utility bills, etc.
 - proof of income
 - any other documents which the interviewer will advise on

2 Assignment application decision

- 2.1 If the application is approved, the assignee will need to sign a document to show agreement and understanding they must comply with the terms of the tenancy agreement. An officer will explain the tenancy agreement to the assignee so they understand their rights and responsibilities and vice versa in an interview.
- 2.2 Deeds of assignment will be sent to the new tenant for their signature. If the assignee needs to claim welfare benefits, they will need to be signposted to the Department for Work and Pensions (DWP).
- 2.3 Where assignment is refused, a refusal letter will be sent to the applicant giving full reasons.

3 Rent arrears on the account

- 3.1 Joint tenants - if there are rent arrears outstanding at the time of assignment, both tenants will remain responsible for the debt outstanding.
- 3.2 Sole tenants – the assignor will remain liable for any outstanding rent arrears accumulated whilst they were a tenant. However, discretion may be exercised, dependent upon the tenant's circumstances.