



## **Assignment, Mutual Exchange and Succession Policy**

<b>Date submitted to the Board:</b>	<b>31<sup>st</sup> May 2017</b>
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### **Introduction**

This policy sets out EPIC's approach to the following:

Assignment – This describes the circumstances where a tenancy may be signed over to somebody else.

Mutual Exchange – This is where one of our tenants requests that they exchange their home with another tenant of a Registered Provider or Local Authority.

Succession – This describes the circumstances where somebody else living with the tenant may inherit the tenancy after the tenant's death.

This policy also sets out guidance as to when we may grant a new tenancy to an occupant remaining in an EPIC property after the tenant has left.

### **Aims of the Policy**

- To ensure we comply with legislation, regulations and guidance as defined by the Housing Acts and the social housing regulator.
- To provide clear guidance to staff when deciding applications for Assignment, Mutual Exchange or Succession.
- To be fair and transparent in our decision making.

### **Policy Statement**

We are committed to providing a high quality service to all of our customers. All applications will be dealt with sensitively and we will ensure that those applicants with a statutory or contractual right are dealt with promptly.

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### **Assignment**

#### **What is an assignment?**

Assignment involves a customer requesting permission to sign over their tenancy to another person. The assignment does not create a new tenancy but results in the transfer of the current tenancy agreement to the new tenant or tenants. For example, in a mutual exchange, an incoming Secure Tenant from a local authority 'inherits' an Assured Tenancy, and an EPIC tenant exchanging with a local authority tenant will inherit a Secure Tenancy.

### **What is not an assignment?**

If a tenant changes his or her name, there is no assignment. Once satisfactory proof of the change of name has been received (e.g. marriage certificate or deed poll), the tenant's name should be changed on the computer system and a note made on the original tenancy agreement of the change of name and the date of which it came into effect.

### **When is an assignment allowed?**

1. Where an assignment is directed by the courts
2. Where we agree that a sole tenancy can become a joint tenancy
3. Where we agree that a joint tenancy can become a sole tenancy
4. Where permission is given for a mutual exchange
5. Where it is permitted by the tenancy agreement
6. Where a member of the tenant's household inherits (succeeds) to a tenancy

### **1. Assignment by the Court**

The Court may, under Family Law Proceedings, determine to which spouse or partner the tenancy is to be assigned through a Property Adjustment or Transfer Order made during divorce, separation or Child Act proceedings. In this case, although the consent of the landlord is not required, EPIC should receive notification of the proceedings and have the right to appear and make submissions if we have any objection. A new tenancy is not granted but the Court Order requires that an assignment takes place.

### **2. Assignment from a Sole Tenancy to a Joint Tenancy**

EPIC can give consent to allow a sole tenancy to be assigned into the joint names of the tenant and another person living with the tenant. To avoid fraud and people bypassing the waiting list, we will only consider this type of assignment in line with the tenancy agreement.

### **Who can become a Joint Tenant?**

For tenancy agreements that started after 1<sup>st</sup> August 2012, the tenancy can only be assigned to the tenant's spouse, civil partner or cohabitee.

For tenancy agreements that started before August 2012, in addition to the above, a member of the tenant's family can be assigned the tenancy, as long as they have lived with the tenant for at least 12 months.

### **When is an assignment to a Joint Tenancy not permitted?**

An assignment into joint names will not be permitted where there are rent arrears in place or any other outstanding breaches of tenancy. We will not normally permit an assignment into joint names for Assured Shorthold tenants; such requests can be considered once the tenant has successfully completed their probationary tenancy period.

### **Process to be followed**

Where an existing tenant requests an assignment to another person, this should be treated in the same way as a housing application. This involves a home visit with the proposed joint tenant and all of the normal verification checks undertaken as part of the application process. Where an application for assignment is agreed, we will complete a Deed of Assignment which can be found at [Appendix 2](#). Where an application is refused, we will inform the applicant in writing giving the reasons for refusal and explaining the right to appeal in accordance with our Appeals procedure.

### **3. Assignment from a Joint Tenancy to a Sole Tenancy**

EPIC will normally grant consent for a tenancy to be assigned from a joint tenancy to a sole tenancy for both Assured and Assured Shorthold tenants where there has been an irretrievable breakdown in the relationship between joint tenants as long as there are no rent arrears or other outstanding breaches of tenancy.

An exception from the Chief Executive may be granted in cases involving domestic abuse or other exceptional situations where it would not be appropriate to impose the above conditions.

#### **What happens if a joint tenant cannot be traced?**

Where a joint tenant has left the property and cannot be traced, EPIC may accept a surrender of the tenancy from the remaining joint tenant and issue a new sole tenancy to the remaining tenant. This action will not be completed if the tenancy has any rent arrears or outstanding tenancy breaches. This is to be considered as a last resort where contact cannot be made with a joint tenant who has left the property.

#### **Process to be followed**

Where an application for assignment is agreed, we will complete a Deed of Assignment which can be found at [Appendix 2](#). Where an application is refused, we will inform the applicant in writing giving the reasons for refusal and explaining the right to appeal in accordance with our Appeals procedure.

### **Mutual Exchange**

#### **4. Mutual Exchange**

A Mutual Exchange occurs when two tenants swap homes by legally assigning their tenancies to each other. The permission of the landlord of both tenants is required. If either tenancy is a joint one then all joint tenants must agree to the exchange before it can go ahead. An exchange may take place between EPIC tenants, or where an EPIC Tenant swaps their home with a tenant of a Registered Provider or Local Authority.

EPIC Tenants who have an Assured Shorthold Tenancy Agreement do not have the right to mutual exchange.

EPIC will provide access to an internet-based national mobility scheme that is part of the national HomeSwap Direct framework for tenants who wish to exchange their property. EPIC will either subscribe to such a service or pay the subscription fees for individual tenants who wish to exchange. EPIC will provide assistance to tenants who do not have access to the internet to access this service. Our procedure manual 'Mutual Exchanges – Searching for Partners' will provide more details on this process.

#### **Mutual Exchange for EPIC Tenants or where the Incoming Tenant has an Assured Tenancy Agreement**

For Assured Tenants, we will only refuse an application where it meets one or more of the exclusion criteria listed in our Allocations Policy or one of the grounds listed in Schedule 3 of the Housing Act 1985.

#### **Mutual Exchange where the Incoming Tenant has a Secure Tenancy Agreement**

For Secure Tenants (usually tenants of a local authority), a mutual exchange can only be refused on one or more of the grounds listed in Schedule 3 of the Housing Act 1985. The main grounds likely to be applicable are:

- [Ground 1](#): A possession order has been made.
- [Ground 2](#): Possession proceedings have been started or a Notice Seeking Possession has been served
- [Ground 2A](#): Anti-social behaviour
- [Ground 3](#): The assignment would result in under occupation
- [Ground 4](#): The assignment would result in over occupation
- [Ground 7](#): The property is specially adapted for a physically disabled person.
- [Ground 9](#): The property is let to people with special needs.

The full grounds are reproduced at [Appendix 1](#).

Conditional consent to the exchange can be given where one of the tenants is in breach of their tenancy (including rent arrears). The tenant must then remedy the breach before the exchange goes ahead.

For secure tenants, consent must be refused within 42 days of the tenant's application being made; otherwise the landlord is deemed to have given consent to the exchange.

### **Process to be followed**

Home visits and verification checks are undertaken with both mutual exchange partners in accordance with the Allocations Policy. Where a mutual exchange is approved, we will complete a Deed of Assignment which can be found at [Appendix 2](#). Where an application is refused, we will inform the applicant in writing giving the reasons for refusal and explaining the right to appeal in accordance with our Appeals procedure. A copy of this correspondence should also be sent to the exchange partner's landlord.

## **5. Assignment permitted by the Tenancy Agreement**

Where an application is made by a tenant wishing to assign their tenancy, we will investigate the circumstances of the person who wishes to take on the tenancy to determine if the assignment is permitted within the terms of the Tenancy Agreement.

It is important that the original Tenancy Agreement is referred to in an assignment case, as different rules may apply depending on the version of the Tenancy Agreement used. For simplicity, EPIC's two main tenancy agreement versions will be considered as part of this policy.

### **When is assignment permitted?**

All versions of our tenancy agreements only allow a tenant to assign their tenancy to a person who would be able to succeed to the tenancy had the tenant died. The next section sets out the criteria for succeeding to a tenancy, and therefore the situations in which a tenant can request that their tenancy be assigned to somebody else.

### **Assignment counts as a succession**

Where a tenancy is assigned in this way, this counts as a Tenancy Succession. No further succession to the tenancy is permitted after the tenancy has been assigned except where a joint tenant remains in the property after the death of one of the other joint tenants.

### **Process to be followed**

Where an application for assignment is agreed, we will complete a Deed of Assignment which can be found at [Appendix 2](#). Where an application is refused, we will inform the applicant in writing giving the reasons for refusal and explaining the right to appeal in accordance with our Appeals procedure.

## **Succession**

### **6. Assignment by Succession**

Succession may occur where a tenant has died. The succession rules depend on the version of the tenancy agreement in place for that particular tenancy. In every case, a joint tenant will automatically inherit the tenancy on the death of the other joint tenant under the principle of survivorship. This counts as a succession to the tenancy, with no further succession rights accruing to the remaining joint tenant. In other succession cases, we need to refer to the tenancy agreement. Our two main forms of tenancy agreement are set out below:

### **Assured and Assured Shorthold Tenancies commencing prior to August 2012**

This Tenancy Agreements states the following:

### **Succession to spouse**

On the death of a sole Tenant who is not a Successor, that the Tenancy will pass to the Tenant's spouse, civil partner, or person living with the tenant as spouse or civil partner provided that he or she occupies the Premises as his or her only or principal home at the time of the Tenant's death.

A Successor is:

- (I) a spouse or civil partner or person living with the tenant as spouse or civil partner in whom the Tenancy was vested under this clause; or
- (II) a person from whom the Tenancy was inherited (see the following clause); or
- (III) a person that would have been entitled to succeed had the previous Tenant died and to whom the Tenancy was assigned under the terms of this agreement;
- (IV) a Tenant by survivorship when one of two or more joint Tenants has died.

### **Succession (other than to spouse)**

On the death of a sole Tenant who is not a Successor as defined in this agreement the Company will seek possession under ground 7 of Schedule 2 to the Housing Act 1988 only if the person that inherits the Tenancy;

- (I) is not a member of the Tenant's family; or
- (II) did not reside with the Tenant for the twelve months preceding the Tenant's death; or
- (III) did not occupy the Property as his or her only or principal home at the time of the Tenant's death; or
- (IV) will not agree in writing to abide by the terms of this Tenancy.

The Company may seek possession if, six months after the death of the Tenant, there has been no grant of probate or letters of administration.

[In plain English, this means that a member of the tenant's family can succeed to the tenancy as long as they lived with the tenant for at least 12 months prior to the tenant's death and were occupying the property as their principal home at the time of the tenant's death.]

### **Assured and Assured Shorthold Tenancies commencing from August 2012**

Following the introduction of the Localism Act, Registered Providers have more flexibility in defining who can succeed to a tenancy. EPIC has chosen to adopt the minimum statutory provision which is:

On the death of a sole Tenant who is not a Successor, that the Tenancy shall pass to the Tenant's spouse, civil partner, or other partner provided that he or she occupies the Premises as his or her only or principal home at the time of the Tenant's death.

A Successor is:

- (a) a Tenant by survivorship when one of two or more joint Tenants has died; or
- (b) a partner in whom the Tenancy was vested under this clause; or
- (c) a person that would have been entitled to succeed had the previous Tenant died and to whom the Tenancy was assigned.

There is no right of succession for a member of the tenant's family under the new tenancy agreement; however please see the section below which details the circumstances in which we may grant a new tenancy to a member of the tenant's household.

## **Circumstances where EPIC may grant a new tenancy to a member of the household**

Where there is no successor to a tenancy, EPIC may consider granting a *new tenancy* to the remaining occupant(s) based on the following criteria. This is **not** a formal succession and a new Assured Shorthold tenancy agreement must be created if this discretionary power is used.

- a. Were we informed in a reasonable time (usually 2 months) that the remaining person(s) were living at the property?
- b. Have the appropriate statutory authorities been notified that the remaining person is living at the property? (e.g. Council Tax, Housing Benefit, Electoral Register)
- c. Has the remaining person been resident at the property for at least one year?
- d. Is the rent account for the property clear?
- e. Are there no tenancy breaches?
- f. Does the remaining person(s) meet our eligibility criteria for housing (including under occupancy)?

Where the answers to the above questions are all "Yes", we will normally grant a new tenancy to the remaining occupants of the property. Please note that the remaining occupants do not need to have a family connection to meet the above criteria.

Where the remaining occupants do not meet the above criteria the Chief Executive may approve the issuing of an Assured Shorthold Tenancy for a period of 6 months in order to enable the remaining occupants to make other arrangements to find a new home.

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## **Equality and Diversity Statement**

We are committed to ensuring and promoting equality of opportunity for all. We are therefore opposed to discrimination on any grounds, including race, religion, gender, marital status, sexual orientation, disability, age, or any unjustifiable criteria. We are committed to developing a culture that values people from all sections of society and the contribution which each individual can make.

## **Monitoring and Reporting**

We will produce annual performance indicators on our allocations service and report these quarterly to the Management Board.

## **Responsibilities**

The Housing Team is responsible for the administration, inspection, monitoring and reporting of all requests for an Assignment, Mutual Exchange and Succession.

## **Review Mechanism**

This Policy will be reviewed every three years, or following any legal or regulatory changes.

## **Related Policies**

Allocations Policy.

## **Appendix 1**

### **Schedule 3 Housing Act 1985**

#### **Grounds for Refusing a Mutual Exchange for a Secure Tenant**

##### **Ground 1**

The tenant or the proposed assignee is obliged to give up possession of the dwelling-house of which he is the secure tenant in pursuance of an order of the court, or will be so obliged at a date specified in such an order.

##### **Ground 2**

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of Grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

##### **Ground 2A**

Either

(a) a relevant order or suspended Ground 2 or 14 possession order is in force, or

(b) an application is pending before any court for a relevant order, a demotion order or a Ground 2 or 14 possession order to be made,

in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A "relevant order" means-

an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);

an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);

an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);

an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998; or

an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003.

A "demotion order" means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A "Ground 2 or 14 possession order" means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

##### **Ground 3**

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

**Ground 4**

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

**Ground 5**

The dwelling-house -

(a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and

(b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of - the landlord, a local authority, a new town corporation, a housing action trust, an urban development corporation, or the governors of an aided school.

**Ground 6**

The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.

**Ground 7**

The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.

**Ground 8**

The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.

**Ground 9**

The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

**Ground 10**

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of EPIC and the proposed assignee is not, and is not willing to become, a member of EPIC.

## Appendix 2

### ***Deed of assignment and consent to assignment***

**Dated:** Click here to enter a date.

**Parties:**

(1) Click here to enter text. of  
Click here to enter text.  
(called **the existing tenant** in this deed);  
[see notes 1, 3 and 4 below]

(2) Click here to enter text. of  
Click here to enter text.  
  
(called **the new tenant** in this deed);  
[see notes 2, 3 and 4 below]

(3) **Landlord Name:**  
**Empowering People Inspiring Communities Ltd**  
**Landlord Address:**  
131-141 Ubberley Road, Bentilee, Stoke-on-Trent, ST2 0EF  
(called **Empowering People Inspiring Communities** in this deed).

**The property** Click here to enter text.

**The tenancy agreement:**  
the tenancy agreement dated Click here to enter a date., including any variations to it

**The tenancy:** the tenancy created by the tenancy agreement

**The assignment date:** Click here to enter a date.

#### **1. Introduction**

- 1.1 The tenancy is vested in the existing tenant
- 1.2 Subject to the terms of this deed, the existing tenant has agreed to assign the tenancy to the new tenant and Empowering People Inspiring Communities has agreed to consent to the assignment.

#### **2. Assignment**

The existing tenant assigns the tenancy to the new tenant on the assignment date (called **the assignment** in this deed) for the new tenant to hold subject to the terms of the tenancy agreement.

#### **3. The new tenant's obligations**

- 3.1 The new tenant will indemnify the existing tenant in respect of all liabilities arising under the tenancy agreement from the assignment date.
- 3.2 The new tenant will comply with the terms of the tenancy agreement from the assignment date, including the obligation to pay rent.

#### **4. Breaches of the tenancy (including rent arrears)**

The existing tenant acknowledges that they remain liable for any breach of the tenancy agreement (including rent arrears) arising before the assignment date.

**5. Empowering People Inspiring Community's consent**

Empowering People Inspiring Communities consents to the assignment.

Signed as a deed by the **existing tenant** .....  
In the presence of:-

Signature of witness.....

Witness name Click here to enter text.

Witness address 131-141 Ubbberley Road, Bentilee, Stoke-on-Trent, ST2 0EF

Signed as a deed by the **existing tenant**.....  
In the presence of:-

Signature of witness.....

Witness name Click here to enter text.

Witness address 131-141 Ubbberley Road, Bentilee, Stoke-on-Trent, ST2 0EF

**[see notes 1, 4 and 5 below]**

Signed as a deed by the **new tenant**.....  
In the presence of:-

Signature of witness.....

Witness name Click here to enter text.

Witness address 131-141 Ubbberley Road, Bentilee, Stoke-on-Trent, ST2 0EF

Signed as a deed by the **new tenant**.....  
In the presence of:-

Signature of witness.....

Witness name Click here to enter text.

Witness address 131-141 Ubbberley Road, Bentilee, Stoke-on-Trent, ST2 0EF

**[see notes 2, 4 and 5 below]**

Signed on behalf of **Empowering People Inspiring Communities:**

.....

Name Click here to enter text.

Position Housing Officer

## Notes

1. Where there is more than one existing tenant, both tenants' names must appear at the start of this deed and both existing tenants must sign this deed
2. Where the tenancy is being assigned to more than one new tenant, the names of all new tenants must appear at the start of this deed and all new tenants must execute the deed.
3. Where the tenancy is being assigned from joint tenants into the sole name of one of the tenants, the person who is becoming the sole tenant must sign this deed twice (as an existing tenant and as the new tenant) and their name must appear twice at the start of this deed (as an existing tenant and as the new tenant)
4. Where the tenancy is being assigned from a sole tenant to joint tenants, one of which is the sole tenant, the sole tenant must sign this deed twice (as existing tenant and as a new tenant) and their name must appear twice at the start of this deed (as the existing tenant and as a new tenant)
5. Delete if only one existing / new tenant.