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Assignment and Succession Policy

1.0 Key aims

1.1
- To ensure that the legal requirements for dealing with assignments of tenancies are followed
- To ensure maximum rent and service charge income through effective and efficient management of assignments
- To ensure that a new tenancy is not inadvertently created in error and that the ability to pursue arrears on the tenancy is protected
- To ensure that additional rights, such as the right to succeed, are not inadvertently created by issuing a new tenancy in error.
- To ensure that a tenant and assignee's rights are upheld and that complaints against Coastline are minimised as a result
- To give clear support and guidelines to colleagues dealing with sensitive issues that may arise as a result of an assignment request
- To ensure that Coastline stock is used effectively in the way assignments are managed

2.0 Diversity

2.1 Under Article 8 of the Human Rights Convention, as applied to public sector landlords by the Human Rights Act 1998, everyone has a right to respect for their home. This is not an absolute right therefore we are entitled not to allow a tenancy to be assigned unless it qualifies in law and is within the scope of this policy.

2.2 However, it is essential that the correct legal procedure is followed to ensure that Human Rights legislation is not breached.

3.0 Confidentiality

3.1 Any personal information provided to us regarding residents personal or financial circumstances will be dealt with in the strictest confidence, and data held in respect of residents will be recorded and processed in accordance with the Data Protection Act and GDPR.

4.0 Succession

4.1 A succession is the transfer of the tenancy to another person on the death of the tenant. It can only occur when the tenant has died. If someone wants to take over the tenancy of someone who is alive then this will be an assignment. This is covered later in this policy.

4.2 When there is a succession, no new tenancy is created and no new tenancy agreement is issued. The successor inherits the existing tenancy of the deceased tenant. If a new tenancy is granted then this is not a succession.

5.0 The effect of a succession

5.1 The effect of a succession and an assignment is similar, in as much as the new tenant (successor or assignee) 'stands in the shoes' of the previous tenant; this means that the successor will inherit the same tenancy type and tenancy terms as that of the person who died, with same rent, rights and responsibilities. There is a preserved Right to Buy (RTB) for someone who succeeds a tenancy if they are a statutory successor or have inherited under a will. There is only one right to succession.

5.2 The deceased tenant's estate remains responsible for any rent arrears or breaches of tenancy agreement that existed at the date of succession.

5.3 A possession order made before the succession can be enforced against the successor, but if there is a suspended possession order, it will be necessary to apply to the court for an order substituting the successor as defendant in the proceedings.

5.4 An injunction obtained against the deceased tenant is not enforceable against the successor.

6.0 Statutory rights of succession

6.1 For all tenancies created prior to 1st April 2012, Section 17 of the Housing Act 1988 applies, and tenants have a statutory right of succession to a partner living at the property as his/her only or principal home at the time of the tenant's death.

6.2 Section 17 actually refers to succession to a *spouse*, but goes on to define this term to include someone living with the tenant as their husband or wife. This includes a same sex partner (including a civil partner).

6.3 A partner would not qualify to succeed the tenancy if their main or principal home was elsewhere, even if they were staying with the tenant when the tenant died.

6.4 For tenancies created on or after 1st April 2012, The Localism Act 2011 has amended section 17 of the Housing Act 1988 to allow us to include express provisions in our tenancy agreements granting additional succession rights to family members.

6.5 However, our current tenancy agreements do not include such provisions.

7.0 Tenancies created between 1998 and February 2006

7.1 Tenancies granted to tenants at the time of the Large Scale Voluntary Transfer, and all new tenants of Kerrier Homes Trust until 20th February 2006 gave additional contractual succession rights to additional family members, who were living at the property at the time of the tenant's death as their only and principal home, and continuously for the past 12 months prior to the death.

7.2 The contractual rights reflect those stated in the Housing Act 1985, which under Section 113 defines family members as:

- Parent or grandparent;
- Child (including step or illegitimate child) or grandchild;
- Brother or sister;

- Uncle or aunt;
- Nephew or niece.

8.0 Fixed-term tenancies

8.1 The amended section 17 also provides for a right of succession for fixed term assured tenancies provided that:

i. The tenancy is for a term of not less than two years;

ii. The landlord is an Registered Provider; and

iii. The tenancy agreement contains an express term allowing for succession. The intention is to ensure that affordable rent tenants enjoy similar rights of succession to those enjoyed by periodic tenants

8.2 Our fixed-term tenancy agreements (for social rents and affordable rents) grant succession rights as per section 6.0 above. The person succeeding to the tenancy will inherit the remainder of the tenancy term and will have a review to determine their housing options. This will be made clear to the successor.

9.0 Probationary Tenants

9.1 If a tenant dies during their probationary period, we will allow a succession in accordance with section 6.0 above. However, we will usually extend the probationary period by six months to enable us to assess whether the new tenant is able to conduct their tenancy satisfactorily.

10.0 Successor tenants

10.1 There is no provision within tenancy agreements after 20th February 2006, for the granting of a new tenancy to family members living in a property upon the death of tenant, where either there is no person qualifying to succeed or the tenant was already a successor.

10.2 However, we will not unreasonably refuse a request to grant a new probationary tenancy at the address, provided the person has lived at the address as their only and principal home throughout the year before the tenant's death, and the property will not be under or over occupied. The granting of a new tenancy will also be subject to an Affordability Test.

10.3 On occasions, we may offer a new probationary tenancy at another suitable property, as per the Lettings Policy.

11.0 Who is a successor?

11.1 There can be no succession if the deceased tenant was themselves a successor. The tenant is a successor if:

- They were passed the tenancy upon the death of their partner or spouse, under the Housing Act 1988, or another family member under a contractual right;
- They were a joint tenant and became a sole tenant, upon the death of their joint tenant;
- They mutually exchanged to the address and were a successor under their previous tenancy; or

- They became the tenant after a Court Order in family proceedings, if the person from whom they got the tenancy was a successor.

11.2 The following order of succession applies to assured and probationary tenancies:

- Joint tenancy – to surviving joint tenant by survivorship;
- Spouse (including civil partner) or partner living in the property as their only or principal home at the date of the tenant's death; and
- If no one qualifies as a successor, we may consider whether to grant a new tenancy of the property or of an alternative property.

12.0 Competing successors

Qualifying adults should agree who will succeed the tenancy but if they are unable to agree, then Coastline will choose based upon usual criteria for selecting a new customer. This will be based upon affordability, behaviour and risk and in line with our Lettings Policy.

13.0 If there is no successor

13.1 If there is no qualifying successor or candidate for a new tenancy, the tenancy should be terminated by the service of a Notice to Quit addressed to: *The personal representatives of [name of deceased tenant]*.

13.2 Once the Notice to Quit has expired (after 28 days):

- The locks should be changed if the property is empty; or
- If the property is occupied, possession proceedings should be taken to remove the occupier.

14.0 Assignment

14.1 Assignment is the transfer of the legal interest in a property to another person or persons, including the rights and obligations of a tenancy. The name(s) of the tenants and assignee(s) must be written in full on all documents.

Formal permission must be sought by the applicant(s), and if approved, we will assign tenancies under the following circumstances:

- By way of an approved mutual exchange
- Specified by a Court of Order
- To a person who could have succeeded the Tenancy in the event of the tenant's death

14.2 An assignment of a tenancy is the transfer of a tenancy from the tenant to someone else. It can be a transfer from an existing tenant to a new tenant or from joint tenants to a sole tenant. When a tenancy is assigned, no new tenancy is created. This means that no new tenancy agreement is issued. If a new tenancy agreement is issued then it will not be an assignment; it will be a surrender of the existing tenancy and the creation of a new tenancy.

14.3 As a matter of law, an assignment does not have to be in writing. However, as a matter of good practice, it should always be in writing and it is our policy to use a Deed of Assignment.

14.4 It should be remembered that we are not party to an assignment. The assignment is a transaction between tenants. However, **we do need to give consent** to the assignment and this can be done in the Deed of Assignment.

14.5 Consent would not normally be granted for an assignment where there are rent arrears or where legal action is being taken in respect of other tenancy breaches. The only exception to this is where rent arrears have accrued purely due to welfare reform and the assignment would enable the arrears to be repaid.

15.0 The effect of an assignment

15.1 An assignment transfers the tenancy from the existing tenant or tenants to the new tenant or tenants. As stated above, a new tenancy is not created.

15.2 The effect of an assignment is similar to that of a succession, in as much as the new tenant (successor or assignee) 'stands in the shoes' of the previous tenant.

15.3 Action in respect of rent arrears and other breaches of tenancy that occurred prior to the assignment cannot be taken against the new assignee, but must be taken against the old tenant.

15.4 Any possession order made before the assignment can be enforced against the new tenant as long as the court makes an order substituting the new tenant as defendant in the proceedings.

15.5 Under Section 15 of the Housing Act 1988, it is an implied term in every assured tenancy that it cannot be assigned without the landlord's consent. There is no statutory requirement for the landlord to give consent, even if their refusal seems unreasonable.

15.6 The clauses in Coastline's tenancy agreements differ, depending on when the tenancy was awarded. However, in all agreements assignments will be explicitly allowed:

- Under a court order; or
- Under a mutual exchange.

15.7 Under Section 15 of the Housing Act 1988, we can still consent to an assignment which is outside those suggested in the tenancy agreement. The best example of this is where a joint tenant has left the address and no longer regards it as their principal home, and the tenancy is assigned to the remaining joint tenant.

15.8 Coastline will not permit a tenancy to be assigned into the joint names of the tenant and the tenant's partner or spouse, because this automatically enables an additional right of succession.

16.0 Tenancies created between 1998 and February 2006

16.1 No additional assignment rights were granted in tenancies awarded at the time of the Large Scale Voluntary Transfer or to new tenants of Kerrier Homes Trust until 20th February 2006.

17.0 Granting an assignment

17.1 Upon receiving a request for consent for an assignment, we will consider the following:

- ***Are there any rent arrears?*** If there are, we will usually insist that they are paid before the assignment goes through. In exceptional cases (such as where the arrears are purely due to welfare reform and the assignment will enable the arrears to be repaid, or where there is domestic abuse evident), we may allow the assignment to occur;
- ***Are there any other outstanding breaches of tenancy?*** We will usually insist that any breaches are put right before the assignment occurs. For example, we will inspect to check whether there is any tenant damage. Again, in exceptional cases (such as where there is domestic abuse evident), we may allow the assignment to occur;
- ***Is the proposed new tenant acceptable?*** We will treat the proposed new tenant like a housing applicant and will carry out a Pre-tenancy Interview and Risk Assessment. We will therefore establish if they have a record of anti-social behaviour or previous rent arrears;
- ***Will the tenancy by sustainable?*** For example, will the proposed new tenant be able to afford the rent, or will the property be under-occupied or over-crowded?

18.0 Fixed-term tenancies

18.1 Our fixed-term tenancy agreements (for social rents and affordable rents) grant assignment rights as discussed above. The person assigned the tenancy will only have the remainder of the tenancy term and will have a review to determine their housing options. We will point this out to the assignee.

19.0 Probationary Tenants

19.1 If a tenant applies to assign their tenancy during their probationary period, we may allow the assignment after reviewing the application. However, we will usually extend the probationary period by six months to enable us to assess whether the new tenant is able to conduct their tenancy satisfactorily.

20.0 Deed of Assignment

20.1 All assignments should be documented by a Deed of Assignment in which we will give our consent. The Deed of Assignment must be completed carefully and the new tenant must be given a copy of the tenancy agreement and advised clearly that they are bound by its terms.

21.0 Financial assessment

21.1 All applications, will be subject to a financial assessment of the proposed new tenant, to ensure that the tenancy is affordable and therefore sustainable.

21.2 If the proposed new tenant fails the financial assessment, it is likely that we will refuse the application to assign the tenancy.

22.0 Complaints and Challenges

22.1 Where a tenant (or complainant) disagrees with any decision made in respect of applications to succeed or assign, they should appeal in writing to the Tenancy Manager. Any further appeal should be made to the Housing Services Manager.

22.2 The Tenancy Manager and the Housing Services Manager will review the processes and the reasons for making the decision and will reply to the tenant (or complainant) within 10 working days with a determination.

22.3 If the tenant (or complainant) remains unhappy following this reply, the matter will be processed through the Company's Official Complaints Procedure.