

TENANCY POLICY



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1. Policy Statement

- 1.1. Babergh and Mid Suffolk District Councils (BMSDC) recognise that having a place to call home is a key component to improve tenants wellbeing, provide equal opportunities and to support thriving communities.
- 1.2. This policy explains our approach to the use of different tenancy types; when different tenancies will be offered and the ways in which they will be managed.

2. Scope

- 2.1. This policy applies to the letting of settled council housing including 'social' and 'affordable' rented accommodation.
- 2.2. Temporary accommodation and shared equity tenures are not within the scope of this policy.

3. Aims and Objectives

- 3.1. The Tenancy Policy aims to:
 - explain clearly how tenancies will be managed
 - provide our tenants in settled accommodation with security of tenure which supports their wellbeing, the development of family life and thriving communities
 - recognise our tenants' needs, aspirations and changing lives and provide a service which meets these
 - make best use of our limited supply of homes by enabling and encouraging tenants to move to more suitable accommodation if their home no longer meets their needs
 - support our tenants to sustain their tenancies
 - tackle breaches of the tenancy proportionately
 - deter and tackle tenancy fraud.

4. Legal and Regulatory Framework

Regulator of Social Housing: Tenancy Standard

Housing Act 1985

Housing Act 1996

Housing Act 1980

Immigration Act 2014

Protection from Eviction Act 1977

Localism Act 2011

HMCTS Pre-Action Protocol for Possession Claims by Social Landlords

Part VII of the Family Law Act 1996

Prevention of Social Housing Fraud Act 2013

5. Eligibility to Rent

- 5.1. The granting and assigning of Tenancy agreements will only be to individuals with a 'Right to Rent' in the UK. Checks will be undertaken and records maintained in accordance with the requirements of the Immigration Act 2014.
- 5.2. There are occasionally situations where a person under that age of 18 may be allocated a home or succeed to a tenancy. In law a person under 18 years of age cannot hold a legal interest in land and so cannot hold a tenancy but they can 'benefit' from one. The tenancy may be granted to a third party, a 'trustee', and held on trust for the minor until they reach the age of 18. The trustee could be an adult relative or friend or a social worker and is in effect a caretaker of the tenancy. The trustee is responsible for ensuring the rent is paid, but is not liable to pay the rent out of their own resources unless they give a personal guarantee to do so. Once the tenant reaches the age of 18, a new tenancy will be issued to them which is not held in trust.

6. Joint and Sole Tenancies

- 6.1. Tenancies will be issued to main applicants on the housing application.

- 6.2. If the application is in one person's name, they will be granted a tenancy in their name only, known as a 'sole tenancy'. A sole tenant can have others live with them but remains the only person legally responsible for the tenancy.
- 6.3. If the application for housing is for two or more people, a 'joint tenancy' will be issued. A joint tenancy is where two or more people (legally up to four) have signed the tenancy agreement. With joint tenants:
- each tenant has the right to occupy the property
 - each tenant is jointly and severally (individually) liable for the tenancy and the rent – meaning all joint tenants are equally responsible for the whole tenancy
 - neither tenant can exclude the other tenant, unless they get an Occupation Order under the Family Law Act 1996
 - either tenant can end the tenancy by serving a Notice to Quit.

7. Types of Tenancies

- 7.1. BMSDC use two forms of tenancy agreement to let settled accommodation:
- Introductory tenancy
 - Secure tenancy

8. Introductory Tenancies

- 8.1. Introductory Tenancies support our aim to protect communities from anti-social behaviour and encourage new tenants to adhere to all tenancy conditions. The limited security of the Introductory Tenancy acts as a deterrent for tenancy fraud and anti-social behaviour and enables us to tackle any serious breaches of tenancy swiftly (as set out in section 21.12).
- 8.2. All new tenants are granted an Introductory Tenancy unless immediately prior to the letting they held a more secure form of tenancy in social housing, such as a Secure, Assured Non-Shorthold, Flexible or Fixed-Term Tenancy.
- 8.3. Introductory Tenancies are for 12 months but may be extended to a maximum of 18 months. During this time, the tenant has less security and fewer rights than under a Secure Tenancy, for example:
- The tenancy can be ended at the landlord's discretion if the tenant does not keep to the terms of the tenancy agreement
 - They cannot buy their home.
 - They cannot exchange homes with other tenants.
 - They cannot take in lodgers
 - They cannot make any improvements or alterations to the property
- 8.4. If a tenant has complied with the terms and conditions of their Introductory Tenancy, it will convert to a Secure Tenancy after 12 months unless we have served an Extension Notice, are in the process of regaining possession or have repossessed the property.
- 8.5. We may extend the Introductory Tenancy by up to 6 months where we have concerns about, or evidence of a breach of the tenancy agreement. The Introductory Tenancy can be extended by serving an Extension Notice at least 8 weeks prior to the end of the tenancy. The Extension Notice will provide details of the tenant's right to request a review of the decision to extend (see section 22).

9. Secure Tenancies

- 9.1. Secure Tenancies provide protection and assurance to tenants, supporting their wellbeing and providing a firm foundation for them to be part of the local community.

- 9.2. Tenants will be granted a Secure Tenancy if they have held either a Secure, Assured Non-Shorthold, Flexible or Fixed Term Tenancy of a social housing property immediately prior to letting.
- 9.3. Secure Tenants enjoy the following rights;
- A greater security of tenure; a Secure Tenant can only be evicted from their home by the order of the Court. We can only apply for a Court order on one or more of the grounds for possession in the Housing Act 1985 (as amended by the Housing Act 1996). For most tenants this means that they can enjoy a settled life in their home for as long as they wish, provided that they do not breach the tenancy conditions.
 - A right to exchange their home with another tenant, for example if they need to move to be closer to work or to get a smaller or larger home to better accommodate their family.
 - A right to make improvements to their home provided they have obtained prior written permission from the Council.
 - A right of succession; to pass the Tenancy to a partner or family member in the event of their death (see section 11)

10. Ending a Tenancy

- 10.1. Only a tenant or a person who has a Power of Attorney in place to deal with the tenant's property and financial affairs can serve Notice to Quit to bring the tenancy to an end.
- 10.2. At least 28 days' written Notice to Quit must be served on us, the notice must start on a Monday and end on a Sunday. Notice can be received by email or hard copy to our address as detailed in the Tenancy Agreement. We will offer reasonable alternatives where a tenant may have difficulty writing to us.
- 10.3. In a joint tenancy, either tenant can serve Notice to Quit which will be legally binding and will bring the tenancy to an end (see 11.11).
- 10.4. If a tenant is unable to end their tenancy themselves for any reason and there is no Power of Attorney in place, then a suitable person needs to be appointed by the Office of the Public Guardian.
- 10.5. If a sole tenant has passed away and there is nobody with a right of succession, an Executor of their Will can issue us with a Notice to Quit to end the Tenancy. In these instances we allow a shorter notice period of at least 2 weeks notice, the notice must start on a Monday and end on a Sunday.
- 10.6. If there is no Executor to serve notice on behalf of the deceased, then we will serve a 28 day Notice to Quit upon the personal representatives of the late tenant at the property and send a copy of the Notice to Quit to The Office of the Public Trustee. Rent will continue to be charged in all situations until the Tenancy can be legally ended.

11. Succession

- 11.1. When a tenant dies there may be a right for the Tenancy to be passed on; this is known as a succession.
- 11.2. There can only be one succession to a tenancy. If the tenancy is assigned to a would-be successor this also counts as a succession (see section 15)
- 11.3. Details of who can succeed to a tenancy are set out in the tenancy agreement.
- 11.4. If the tenancy is in joint names and one joint tenant dies, then the remaining tenant will succeed by 'survivorship' and the tenancy will continue in their sole name, this counts as one succession.

- 11.5. Succession can only be to people who are living in the property as their only or principal home at the time of the tenant's death.
- 11.6. For successors other than a spouse, civil partner or a person who was living with the tenant as if they were a married couple or civil partner, there is an additional requirement to have resided with the tenant for a period of 12 months before their death to be eligible to succeed.
- 11.7. Under-occupation after Succession to Tenancy
- 11.8. A spouse, civil partner or a person who was living with the tenant as if they were a married couple or civil partner has the right to remain in the property regardless of their need for it.
- 11.9. Any other qualifying person with the right of succession can be required to move to a more suitable property if the property does not meet their housing needs. We will treat each case sensitively and on its own merits. We may require successors to move in some situations, including when:
- the property has become underoccupied by more than one bedroom
 - the property has been adapted for a person with disabilities and there is no longer a person with disabilities living in the home
- 11.10. Ground 15A of the Housing Act 1985 gives us the ability to obtain a possession order to move a successor to suitable alternative accommodation if they are unwilling to move of their own accord.
- 11.11. Persons residing in the property at the end of the tenancy
- 11.12. There are occasions where the tenancy has ended but people still reside within the property, for example where one joint tenant has moved and ended the tenancy for both tenants, or where there is no person with a legal right of succession.
- 11.13. In these instances we will act with compassion towards the resident(s), treat each case on its own merits and assess their eligibility for homelessness assistance and/or social housing with the aim of preventing homelessness. We reserve discretion in deciding whether to offer another tenancy of the property or another Council property.
- 11.14. We will charge for use and occupation to the remaining occupier(s) in the property once the tenancy has been ended. The use and occupation charge will be equivalent to the rent charged for the property.

12. Assignment

- 12.1. Assignment is where a tenancy is passed to another person. Assignment is prohibited except for three situations as set out in s.91 of the Housing Act 1985:
- Assignment by mutual exchange
 - Assignment under property adjustment orders in connection with family/matrimonial proceedings
 - Assignment to a person who would qualify to succeed to the tenancy (counts as a succession)
- 12.2. Tenants must seek our consent to assign their tenancy. We will not unreasonably withhold our consent to an assignment.
- 12.3. If an assignment takes place outside the specified circumstances in which assignment is permitted, without our consent, it will not result in the transfer of the tenancy. The tenancy will no longer be secure, and the assignee will not become a Secure Tenant. The Council will then be able to terminate the tenancy by service of a Notice to Quit.

12.4. Details of each type of assignment is explained in the following sections.

13. Mutual Exchange

- 13.1. Secure tenants have a statutory right to exchange their tenancy and home with another council or housing association tenant, known as a 'mutual exchange'. Mutual exchanges are completed by assignment and are facilitated by the landlord(s). In an exchange, tenants pass responsibility for the tenancy and home to another tenant and there is no break in the tenancy. This means that the responsibility to put right any tenancy breach (damaged fittings, poor decorative order etc) is also passed on.
- 13.2. Tenants wishing to exchange their homes must complete an application form seeking permission to proceed. We have the right to refuse a mutual exchange on certain grounds contained in Schedule 3 of the Housing Act 1985 within 42 days of the date of application. If one of the grounds in schedule 3 applies to the mutual exchange, the request may be refused.
- 13.3. Some properties have covenants which restrict who can be allocated the property when it becomes vacant. Typically these covenants give priority or restrict occupation to people with a local connection to a village, neighbouring parishes and/or a district in a cascading fashion. These covenants do not restrict tenants wanting to exchange their home because no letting takes place and the property is not vacant at any point. This means that tenants in these properties can legitimately exchange tenancies with other tenants who may not have a local connection.
- 13.4. Tenants are advised to exercise caution when considering an exchange with a tenant of another landlord, to ensure that they fully understand the type of tenancy they will be taking over in their new home.
- Tenants with a Secure Tenancy which began *before* 1 April 2012 exchanging with a tenant on a fixed-term tenancy will be able to retain their periodic tenancy status with their new landlord. The exchange will not be completed by assignment, as the other landlord is obliged to grant a new periodic tenancy of their property.
 - Tenants with a Secure Tenancy which began *on or after* 1 April 2012, exchanging homes with a tenant on a fixed term Tenancy will take on a fixed term Tenancy with their new landlord, thereby losing their long-term security of tenure.

14. Assignment by Order of the Court

- 14.1. Tenants may seek to transfer the Tenancy by Court Order, for example in divorce proceedings. We will assign tenancy at the Order of the Court.

15. Assignment to a Qualifying Successor

- 15.1. Sole tenants have the right to assign their Secure Tenancy to a person who would qualify to succeed to the tenancy in the event of their death with our consent. The right to assignment in this way does not apply to a joint secure tenant who wishes to relinquish their interest in the tenancy to the remaining joint tenant (see section 16).
- 15.2. We will not unreasonably withhold our consent, reasons for refusing consent include but are not limited to:
- The person is not eligible for social housing under our Allocations Policy
 - The prospective tenant is not able to afford the rent
 - There are rent arrears
 - We have started possession proceedings

- The property has been adapted for a person with disabilities and there would no longer be a person with disabilities living there.

16. Relationship Breakdown

- 16.1. When one tenant in a joint tenancy decides to no longer reside in the property, they may request for the tenancy of the property to be in the sole name of the remaining occupant.
- 16.2. It is not possible for a joint tenancy to be passed on by deed of assignment or deed of release except in the case where it is required by a Court Order. The change can only be made if we agree to create a new sole tenancy for the remaining tenant.
- 16.3. Applications for a sole tenancy will be determined on a case-by-case basis. We may refuse requests for a sole tenancy in situations where:
 - The person is not eligible for social housing under our Allocations Policy
 - The property would be under-occupied by more than one bedroom
 - The remaining tenant is not able to afford the rent
 - The departing tenant is not adequately housed elsewhere
 - There are rent arrears
 - We have started possession proceedings
 - The property has been adapted for a person with disabilities and there would no longer be a person with disabilities living there.
 - Domestic abuse has been disclosed and the alleged perpetrator proposes to remain in the property
- 16.4. If we confirm that a new sole tenancy is to be issued, a Notice to Quit can then be served by one of the joint tenants to terminate the existing joint tenancy. A new sole tenancy of the property will be created to commence once the Notice to Quit expires.
- 16.5. If the application is refused, or if no application is received, and the departing joint tenant serves notice to end the tenancy regardless, it will be legally effective in ending the tenancy (see 11.11 for next steps).

17. Requests to Create a Joint Tenancy

- 17.1. A tenant can request to add their partner, spouse or civil partner to their Tenancy, provided that they are not themselves a successor to the tenancy.
- 17.2. If approved, the change will be facilitated by issuing a new tenancy of the property in joint names.
- 17.3. The requirements for us to approve such requests are:
 - The prospective new tenant must provide evidence they have lived with the tenant at the property for the preceding 12 months as their principal home, or provide a marriage or civil partnership certificate.
 - The prospective new tenant must not hold a tenancy or own a property elsewhere.
 - The existing tenancy must not be in arrears
 - There must not be any current breaches of the tenancy agreement
 - The prospective tenant must evidence a Right to Rent in the UK (see 5.1).
- 17.4. If we confirm that a new joint tenancy is to be issued, a Notice to Quit can then be served by the tenant to terminate their existing sole tenancy. A new joint tenancy of the property will be created to commence once the Notice to Quit expires.

18. Abandonment

- 18.1. It is a requirement of a tenancy that the tenant occupies their property as their only or principal home. If a tenant is not occupying their property as their only or principal home and has no

intention to return, then the tenancy falls away and the landlord may regain possession within 28 days by serving a Notice to Quit.

- 18.2. Temporary absence from the property is permissible providing that the tenant intends to return. A tenant may have genuine reasons for being away from their home for a period, including periods of ill health, the need to care for another person or a period spent in custody and so thorough investigations will be undertaken prior to taking legal action for abandonment.

19. Making Best Use of Housing

- 19.1. We recognise that there is a limited supply of larger homes and that these homes can become under-occupied as children grow up and move on. We want to support tenants to move when their homes no longer meet their needs, to free-up these larger homes for families living in overcrowded or temporary accommodation.
- 19.2. Tenants whose needs are not met in their current accommodation are encouraged to apply to the Councils' housing register. Provided they are eligible they will be awarded a priority for downsizing in accordance with the Allocations Policy, and they will be able to apply for more suitable accommodation on the Gateway to Homechoice system.
- 19.3. We encourage tenants to register on the House Exchange website (free of charge) and look for opportunities in other settings, such as social media.
- 19.4. We will develop incentive schemes and promotions which support and encourage tenants to downsize to more appropriate accommodation. Details of which will be available on our website and in other formats on request.

20. Tenancy Fraud

- 20.1. We will take a proactive approach to tackling unlawful subletting and other instances of tenancy fraud, including; obtaining housing by deception, wrongly claimed succession, key selling, unlawful assignment and making false right to buy applications.
- 20.2. Immediate action will be taken to evict those that are unlawfully subletting or that have obtained a Tenancy by deception by giving false or misleading statements. Tenancy Fraud is a criminal offence and individuals risk prosecution under the Prevention of Social Housing Fraud Act 2013 which could result in imprisonment and/or a fine.
- 20.3. Tenancy audits will be carried out from time to time and staff will request details of identification of all persons living in the property. Photographs will be taken of tenants when they receive the keys to their property to help us prevent and tackle Tenancy fraud.
- 20.4. We will encourage and enable residents to confidentially report any concerns of Tenancy fraud to us.

21. Tenancy Sustainment and Enforcement

- 21.1. We commit to providing clear and accessible information to tenants about their obligations and rights as a tenant.
- 21.2. If there are any issues or concerns about the tenancy being breached, we will contact tenants at an early stage to understand how we can work with them to resolve any breaches of the tenancy.
- 21.3. We offer appropriate advice, financial inclusion and tenancy sustainment support either directly or by referral/signposting to external specialist agency.
- 21.4. We will make use of powers granted to us in the Anti-Social Behaviour Crime and Policing Act 2014 to tackle anti-social behaviour perpetrated by tenants, their families and visitors.
- 21.5. The majority of tenancy issues are resolved without the need for tenancy enforcement however, we may seek to obtain a possession order from the County Court for serious or persistent breaches of the tenancy, or to resolve another tenancy or property related issue.

- 21.6. We will follow the Pre-Action Protocol for Possession Claims by Social Landlords when taking possession action, and offer tenants the right to an internal review of certain decisions affecting their tenancies (see section 22)
- 21.7. We will undertake an Equality Impact Assessment prior to asking the Court to make a possession order on a mandatory ground, including applying to Court following service of a 'Notice of Proceedings for Possession' under s128 of the Housing Act 1996 to end an Introductory Tenancy. As part of the assessment, we will invite the tenant to provide details of any and all circumstances and protected characteristics they wish us to consider in our decision-making.
- 21.8. We will encourage tenants facing possession action to seek independent legal advice.
- 21.9. Tenants will be referred to our Housing Solutions team where they are at risk of losing their home, in order that avenues to prevent homelessness can be explored.
- 21.10. Possession may also be pursued where the tenant is not in breach of the agreement, for example if the property needs to be vacated for major improvement works, to dispose of it, or to redevelop the land on which it sits. Tenants may also be required to move where there has been a succession to the Tenancy but the remaining occupants would be more appropriately housed in alternative accommodation (see paragraph 11.7)
- 21.11. We may ask the Court that the tenant pay our legal costs if we make an application to the court. Each case will be considered on its own merits.
- 21.12. Possession action: Introductory Tenancies
- 21.13. Introductory Tenancies can be terminated by service of a 'Notice of Proceedings for Possession' under s128 of the Housing Act 1996. On expiry of the notice, we can apply to Court for an Order for Possession. So long as we have acted lawfully, served the correct notice and followed the correct procedure, the Court must make grant us possession.
- 21.14. As an alternative we may seek a to apply to the Court for a possession order under one of the grounds for possession set out in Schedule 2 of the Housing Act 1985 (as amended by the Housing Act 1996).
- 21.15. Possession action: Secure Tenancies
- 21.16. Secure Tenancies have security of tenure and can only be ended by the landlord if the Court grants a possession order under one of the grounds for possession (as set out in Schedule 2 of the Housing Act 1985 (as amended by the Housing Act 1996)).
- 21.17. Possession orders may be suspended on terms that the tenant complies with their Tenancy agreement and undertakes certain commitments (for example the repayment of rent arrears). Outright possession action and eviction will be used where other options have been exhausted or are not appropriate to resolve the issue.

22. Right to Review

- 22.1. We commit to equality and fairness in decision-making affecting tenant's homes. The right to a review gives tenants the opportunity to challenge decisions and present additional information about their personal circumstances which they wish us to consider.
- 22.2. Tenants are given the opportunity to request an internal review of certain Council decisions.
- 22.3. Details of the right to a review will be set out in a letter accompanying any relevant legal notice. For all other disputes or complaints about tenancy management, tenants may raise a formal complaint.

- 22.4. The request for a review must be in writing and received before the deadline. Tenants are given 14 calendar days from the date of service to submit a written request for review of the following:
- Notice to extend an Introductory Tenancy
 - Notice to terminate an Introductory Tenancy (Notice of Proceedings for Possession' under s128 of the Housing Act 1996)
 - Notice of intention to seek possession under mandatory grounds, i.e. where the Court will be required to make an order if the ground is proven
- 22.5. The person conducting the review will be an Officer of greater seniority than the Officer who made the decision, and who was not involved in the original decision. The tenant can choose to submit information to the reviewing Officer either in writing or by way of an oral hearing. At least 5 days' notice must be given by the Councils of any oral hearing and reasonable adjustments will be made to allow for the tenant to attend.

23. Equality, Diversity and Inclusion

- 23.1. The Councils commit to providing equal opportunities to all in the management of Tenancies.
- 23.2. We will make adjustments to our communications to ensure that every tenant understands their rights and obligations in their Tenancy and has access to services. Translation services are provided and we will make reasonable adjustments for tenants who may find communication in writing difficult.
- We will undertake an Equality Impact Assessment prior to asking the Court to make a possession order on a mandatory ground, including applying to Court following service of a 'Notice of Proceedings for Possession' under s128 of the Housing Act 1996 to end an Introductory Tenancy.

24. Policy Monitoring and Review

- 24.1. The Tenancy Services Corporate Manager will oversee the consistent and fair implementation of this policy and will consult with colleagues to ensure timely and accurate updates of the policy are given. We will carry out a fundamental review of this policy every 5 years or sooner, subject to legal, regulatory changes or if internal changes necessitate.