

Policy Name: Succession, Assignment and Mutual Exchange Policy

1. Policy Summary

- 1.1 Midland Heart operates in areas, of varying degrees of housing demand. The Succession, Assignment and Mutual Exchange Policy should be read in conjunction with the Allocations Policy, which outlines the way we operate and manage the lettings of our properties, in order to make appropriate use of scarce resources in the most equitable and ethical way.
- 1.1 We aim to achieve the highest standards in tenancy management. This policy outlines the circumstances under which someone may be able to succeed a tenancy when a tenant dies, and when a tenant can assign their tenancy to someone else or request a mutual exchange.
- 1.2 There may be occasions where there is good reason to apply discretion when decision making. We will always consider the individual circumstances of the individual involved when making our decisions.

2. Policy Principles

- 2.1 The aim of this policy is to ensure that all successions, assignments and mutual exchanges are considered and processed, fairly and efficiently, and customers are fully aware of the reasons for acceptance or decline of a request.
- 2.2 It aims to ensure that successions, assignments and mutual exchanges take place in accordance with the relevant legislation, that any contractual rights and obligations of the tenancy are adhered to, and that remaining joint tenants and family members (where applicable) have the opportunity to remain in a tenancy that is suitable for their needs and circumstances.
- 2.3 This policy meets our corporate aims of:
- ❖ Creating sustainable tenancies in balanced communities.
 - ❖ Ensuring we make best use of our housing stock, in response to housing demand.
 - ❖ Ensuring compliance with all relevant legal and statutory requirements.
 - ❖ Providing clear and relevant information to customers regarding their rights and responsibilities, and those of us as landlord.
 - ❖ Ensuring the terms and conditions of tenancy agreements are complied with, for the benefit of Midland Heart (MH), customers and the wider community.

3. It applies to

- 3.1 This policy applies to all social housing tenants including, affordable rent tenants. It does not apply to intermediate market rent, leaseholders or those who are on licence agreements.

4. Successions

- 4.1 When notified of a death of tenant Midland Heart will deal with the matter sensitively and efficiently. Regardless of the tenancy type, there can only ever be one succession. It should be noted that a previous assignment to someone who would be entitled to succeed counts as this one succession. There are three types of succession.

i. **Joint Tenants (Survivorship)**

When a joint tenant dies, the tenancy will pass to the other joint tenant under the right of Survivorship. This will count as the one succession allowed by the Housing Act 1985 and Housing Act 1988. In these circumstances, there is no need for the remaining tenant to make an application to take on the tenancy, as it is an automatic statutory right. We will however, write to the remaining tenant to advise they are now the sole tenant.

ii. **Statutory Succession**

This is where succession rights are granted by law to a spouse, civil partner or partner of a Secure or Assured tenant, or where the secure tenancy was granted prior to 1 April 2012 to a qualifying member of the tenant's family, where they are not the joint tenant.

Where a tenant leaves a will:

Where a tenant leaves a will, the property and tenancy vests in the executor of that will. Any potential successors (if more than one) should agree between themselves who will succeed to the tenancy. If they cannot come to an agreement, then the decision will lie with Midland Heart to name a successor, where we will look at the individual circumstances of the household and assess this against our usual allocations criteria. Where we would not normally offer the benefactor a tenancy, we may take action to end the tenancy after offering appropriate housing options advice. If they decide to give up the tenancy, then the executor of the will must supply Midland Heart with a Notice to Quit (NTQ) to end the tenancy.

Where there is no will:

The property and tenancy vest in the Public Trustee. Again, potential successors, if more than one, must agree between themselves who will succeed. If they cannot come to an agreement, then Midland Heart will name the successor based on housing need (as per our Allocations Policy). Should there not be a successor or potential successors do not want the tenancy, the Death of Tenant Process will be followed.

Under 18's

Statutory succession, and in some cases a contractual right to succeed, applies no matter what age the successor may be. If the successor is under 18 years old, then a relative or professional (e.g. social worker) must hold the tenancy in trust until the child is 18.

Secure Tenancies

For Secure tenancies granted before 1 April 2012, there can be one statutory succession to either a surviving spouse, civil partner or partner, or a member of the deceased tenant's family (see immediate family section).

The potential successor must have been occupying the property as their only and principal home at the time of the death. For anyone other than the spouse, civil partner or partner, the person must also have been residing with the tenant for 12 months prior to their death.

For Secure tenancies granted after 1 April 2012, only the spouse, civil partner or partner, can succeed to the tenancy.

Assured and Assured Shorthold Tenancies

For Assured (and Assured Shorthold) tenancies, statutory succession only applies to the deceased tenant's spouse, civil partner or partner. This is providing it is a sole periodic tenancy and the property was the successor's only and principal home, immediately before the death of the tenant.

Starter/ Fixed Term Tenancies

For Starter/ Fixed Term tenancies, the rules are the same as Assured tenancies, except the successor will succeed to the Starter or Fixed term tenancy including any time remaining on the Starter or Fixed Term period.

iii. Contractual Rights

This is where the tenancy agreement provides another person, usually qualifying family members of Assured tenants, or Secure tenants from 1 April 2012, with a right of succession without the need for our consent or permission. Some of our legacy tenancies have extended succession rights, so the Tenancy Agreement must be checked in all cases.

No Succession Rights

If there has already been a succession to the tenancy, then the person remaining in the property is not entitled to succeed. In these cases, the Death of Tenant process will be followed.

5. Discretion to offer a tenancy (discretionary succession/ direct offer)

5.1 Where no family members qualify to succeed on either a statutory or a contractual basis, we may consider, at our discretion, to offer a new tenancy to a family member. This may not be an offer of a tenancy at the property the occupants are currently residing in – see below. The granting of a tenancy may be considered as long as the following are met:

- ❖ The applicant has lived at the property with the tenant in the 12 months prior to their death as their only and principal home.
- ❖ The property is not too large or too small for the occupants at the time of the request (see Allocations Policy).
- ❖ The applicant is able to afford the property.
- ❖ The deceased tenant had no rent arrears at the time of their death, and there has been no anti-social behaviour or other tenancy breach issues.
- ❖ The property has been kept in a clean and well-maintained condition.
- ❖ The applicant has paid any arrears that have accrued since the tenant's death.
- ❖ The applicant is over 18 years old.
- ❖ The applicant is suitable for independent living.

5.1 We will take into consideration whether that has been any previous discretionary successions to predecessors, to ensure any future offers are applied fairly.

5.2 Where all of the above are met, other than the property is too big or too small for the occupant(s), we will make one offer of suitable alternative accommodation.

5.3 Discretionary decisions will be approved by an authorised manager to ensure fairness and transparency. A full review of the circumstances leading to the decision will be conducted, and the rationale will be recorded to maintain accountability.

5.4 Where the above conditions are under investigation or in cases where the criteria is not met, we will set up a use and occupation account (once the tenancy has ended) and we will seek to repossess the property. We will offer advice to the occupant(s) on finding suitable rehousing.

6. ID and Proof of Residency

6.1 We will require evidence in all cases from applicants to confirm their relationship to the deceased, their length of residency at the property, and their immigration status (where applicable) to prove they have **entitlement to social housing** (see Allocations Policy – Appendix B - Eligibility and Exclusions). A death certificate must also be provided.

6.2 Where there is a statutory right to succession under a tenancy, article 5 of *The Immigration (Residential Accommodation) (Prescribed Cases) Order 2014* acts to prevent this automatic succession from rendering a landlord liable for the civil penalties under the Immigration Act 2014. It does this by confirming that a residential tenancy agreement is not to be treated as being entered into where it has arisen by or under a statutory provision. In the case of a statutory succession, as a tenancy has not been "entered into" with the successor, the checks required under the right to rent legislation do not need to be carried out. This is because the checks must be carried out before a tenancy is entered into.

6.3 However, if we learn that someone who has succeeded to a tenancy does not have the right to remain in the UK, we need to take action (see Immigration guidance note **Immigration Act 2016, Persons Occupying Midland Heart Properties and Who Do Not Have Leave to Remain**).

6.4 Midland Heart reserve the right to carry out other checks to ascertain who was living at the property prior to the tenant's death. Any fraudulent claims will be refused and possession action will be taken in accordance with our Housing Counter Fraud Policy.

7. Under Occupation

7.1 Where a statutory succession, survivorship or contractual succession happens, that leads to under occupation of the property, we will discuss rehousing to a more

suitable sized property, in order to make best use of our housing stock and meet local housing need.

- 7.2 We will assess the extent of the under-occupation, consider whether the customer has any additional needs which should to be taken into account, and assess income and expenditure, to ensure the customer can afford the property. Where we decide the property is too large for the occupants, we will make the successor an offer of a suitable alternative property, before starting possession action for under-occupancy.

NB. Depending on the grounds for possession being relied upon, we need to have issued proceedings within 12 months of the date of the tenant's death or 12 months from the date that we became aware of the tenant's death if later.

8. Unauthorised Occupation

- 8.1 Once it has been decided that the remaining occupants have no right to succeed the tenancy, and we have considered eligibility for a discretionary/ direct offer (see section – discretion to offer a tenancy), we will notify the occupants (and the deceased's representatives, where applicable) of our intention to seek possession of the property. We will provide advice on alternative housing options.
- 8.2 After the original tenancy has ended, (i.e. a Notice to Quit has expired) a use and occupation account will be set up. Any remaining occupants of the property will be expected to pay the use and occupation charge, until they vacate the property.

9. Assignments

- 9.1 An assignment of tenancy is the transfer of a tenancy from an existing tenant to a new tenant. Under assignment, no new tenancy is created; the terms and conditions of tenancy remain the same and the new tenant agrees to be responsible for all aspects of the tenancy, including any arrears of rent, from the date of the assignment. This is captured in a Deed of Assignment, which must be completed in all circumstances. An assignment of a tenancy can occur when:
- ❖ A tenant mutually exchanges their home with another Secure or Assured tenant (see Mutual Exchange section below).
 - ❖ There is a relationship breakdown and the court issue an order (i.e. part of divorce or separation proceedings, or an Occupation Order, Family Law Act 1996).
 - ❖ A secure tenant wishes to assign their tenancy to a person who would have qualified to succeed, had the tenant have died.

- ❖ An assured tenant has a contractual right to assign their tenancy and/or their Landlord consents to the assignment.

9.2 An assignment can only take place if the original tenant has the right to assign their tenancy either by virtue of their tenancy agreement and/ or by legislation.

9.3 The Localism Act 2011 amended the right of Assignment, in respect of mutual exchanges, where the exchange involves tenancies entered into before and after 1 April 2012.

Assured tenancies

Assured tenants whose tenancy agreement says nothing about assignment cannot assign their tenancies unless MH consents. In this case, MH may withhold consent for any reason, whether reasonable or not.

Where the assured tenancy agreement expressly makes provision for the tenant to assign with MH's consent, the tenant will be able to assign with consent and such consent cannot be unreasonably withheld.

Where the tenancy allows and it was created before 1 April 2012, we may also allow an assured tenant to assign their tenancy to immediate family members.

Secure tenancies

In respect of secure tenancies, only one assignment can take place by law. It is only possible to assign a secure tenancy in certain specified circumstances.

For secure tenancies created after 1 April 2012, the tenancy can only be assigned to the tenant's spouse or civil partner.

For secure tenancies created before 1 April 2012, if a tenant does not live with a married or civil partner, then they can assign to one of the family members listed below, **but only if the person has lived with them for at least 1 year.**

Once an assignment has taken place, all rights and responsibilities of the tenant are passed to the new tenant.

Immediate Family

Section 113 of the Housing Act 1985 defines a family member as:

- ❖ Spouse, partner or civil partner of that person,
- ❖ Parents,
- ❖ Grandparents,
- ❖ Child/ grandchild,
- ❖ Brother/ sister
- ❖ Uncle/ aunt,
- ❖ Nephew/ niece.
- ❖ Step-relations, half-relations, relations by marriage and illegitimate children are also included in the definition.

Eligibility (to qualify)

The following criteria must also be met, for an assignment to be approved.

- ❖ Immediate family members must prove they have resided at the property for 12 months prior to the request for the tenancy to be assigned, and the property must be their only and principal home (see ID and residency section).
- ❖ There have been no anti-social behaviour or other tenancy breach issues (including domestic abuse and housing related fraud).
- ❖ The property has been kept in a clean and well-maintained condition.
- ❖ Any housing related debt must be paid in full (see Allocations Policy).
- ❖ The family member must be able to afford the property.
- ❖ The property is not too large or too small for the applicant (and their household) at the time of the request (see Allocations Policy).
- ❖ The applicant is suitable for independent living.
- ❖ The applicant must have the Right to Rent under the Immigration Act (*assignments are classed as new tenancies for the purposes of the Act, so before any assignment is approved or executed, Right to Rent checks **must** be carried out*).

9.1 Assignment request will be approved by an authorised manager to ensure fairness and transparency. A full review of the circumstances leading to the decision will be conducted, and the rationale will be recorded to maintain accountability.

10. Relationship Breakdown

10.1 Relationship breakdown can be a common cause of tenancy failure and homelessness. We therefore aim to minimise the impact of relationship breakdowns and have particular regard to domestic abuse, vulnerable adults, and the effects relationship breakdown have on children.

- 10.2 Where a relationship has broken down, we will ask joint tenants to reach a decision on who should remain at the property. Providing they are eligible (see eligibility section), we will allow an assignment of the tenancy. We will need confirmation of this agreement from both parties.
- 10.3 In the event the parties cannot reach a decision, we will advise the parties to seek independent legal advice. However, it is recognised that not everyone will want to do this so in some circumstances, one joint tenant can end the tenancy for the household. In this scenario, we will make reasonable attempts to contact both parties to make them aware the tenancy is coming to an end. If the other party wishes to remain at the property and they are eligible (see eligibility section), then we will make them a direct offer of the property.
- 10.4 There may be occasions where it is appropriate to allocate a property outside of the standard policy criteria due to exceptional circumstances (i.e. Direct Offers). These discretionary decisions will be made to address urgent or unique housing needs that cannot be fully resolved within the regular allocation process. Any such discretionary allocation must be justified, documented, and approved by an authorised manager to ensure fairness and transparency. A full review of the circumstances leading to the decision will be conducted, and the rationale will be recorded to maintain accountability.

11. Mutual Exchange

- 11.1 A mutual exchange is our preferred option for tenants wishing to move. It is where two (or more) tenants exchange their tenancies or homes on a permanent basis with their respective landlord's permission. Where a customer wishes to exchange their home to someone else, it is important that they follow the correct legal procedure. There are several ways in which a tenancy can be transferred to another person, but not all of these methods will be available in every case. The position may depend upon a number of things including:
- They have the right to exchange (what the tenancy agreement says)
 - Both parties wish to exchange
 - Whether the landlord agrees (they have written permission and no grounds for refusal apply)
- 11.1 A mutual exchange is usually by way of each tenant assigning their tenancy to each other, so each effectively takes over their tenancy including its status, Assured or Secure and its rent level.

11.2 However, section 158 Localism Act 2011 provides protection to 'lifetime' tenants i.e. an Assured (non-shorthold) and Secure tenants. Such tenants who commenced their tenancy before 1 April 2012, who want to exchange with a tenant with a flexible tenancy (local authority) or a fixed term Assured shorthold tenancy with a social rent of not less than 2 years, will not be able to effect the exchange by way of an assignment. Instead, each tenant essentially surrenders their tenancy, and the landlords grant new tenancies. This is to ensure that the existing lifetime tenant still has a 'lifetime' tenancy following the exchange. The protection is for the qualifying 'lifetime' tenant only (See appendix 1 – mutual exchange tenancy table).

11.4 This protection does not apply where a lifetime tenant exchanges with a fixed term tenant whose property has an Affordable Rent.

Who can exchange?

- Secure tenants have a statutory right to exchange.
- Assured tenants have a contractual right to exchange i.e. according to their tenancy agreement.
- Fixed Term tenants may also be able to exchange.

Eligible tenants can exchange properties (with permission) with:

- A secure or flexible tenant from a Local Authority.
- A tenant from another Registered Provider that is eligible to exchange.
- Another Midland Heart customer that is eligible to exchange.

The list below details those customers who **cannot** exchange their home:

- Intermediate rent tenancies
- Licensees
- Rent to Homebuy tenancies
- Shared ownership tenancies
- Assured Shorthold tenancies where the fixed term is less than 2 years
- Periodic Assured Shorthold tenancies
- Demoted tenancies
- Starter tenancies that have not completed at least 9 months of their starter period. (Such customers will not normally be permitted to exchange, unless exceptional circumstances apply and approval has been granted by the Operations Manager – Hub or Head of Housing Management).

What a customer can expect...

- To be fully informed about the mutual exchange process and the progression of their application.
- How a mutual exchange may affect the tenancy they hold and the rights their tenancy.
- If moving to another Registered Provider, what they are responsible for as a tenant may change.
- For Midland Heart owned properties involved in the exchange, a gas and electrical check will be carried out by Midland Heart contractors, on the day of the mutual exchange.

Customer responsibilities

- To provide all necessary information and documentation in order for us to process the application.
- To inspect the property, they wish to exchange with, to ensure they are happy to proceed with the exchange in the property's current condition or withdraw the application.
- To allow access for a full property inspection to be carried out at the property owned by Midland Heart. If issues are identified with the property condition, then an action plan will be agreed and a reinspect may be required before a decision can be reached.
- To remove any belongings from their property and the gardens upon vacation and to leave the property in a clean condition.

Grounds for refusal

Customers must have our permission to carry out a mutual exchange. Carrying out a mutual exchange without permission will be considered an unauthorised assignment. We will take action in respect of such unauthorised assignments, in accordance with our Housing Counter Fraud Policy.

We may refuse a mutual exchange application on the grounds specified in Schedule 14 of the Localism Act 2011 and, where applicable, Schedule 3 of the Housing Act 1985.

Additional grounds for refusal

We will also refuse a mutual exchange application if the person moving into Midland Heart's property would be refused a tenancy in accordance with our Allocations Policy.

12. Accessibility and Awareness

12.1 Customers are encouraged to contact us via our Customer Hub, but if for any reason this is not appropriate reports can be made through any of our communication channels.

12.2 This includes to any member of staff, via phone, email and social media. Where complaints are received through social media to maintain privacy and confidentiality, we will respond via private message. We will promote the ways in which reports can be made through our main communication channels.

13. Reasonable Adjustment and Support

13.1 We understand that some tenants and residents may have difficulty communicating their experiences with us, as such we will always make reasonable adjustments, enabling tenants and residents to report their concerns and engage in the process

13.2 There is no prescribed list of reasonable adjustments; the adjustment will depend on the individual's needs. We will discuss the requirements with the person concerned and seek to reach agreement on what may be reasonable in the circumstances.

13.3 In the majority of cases, we will be able to agree and deliver the required reasonable adjustment with a minimum of delay. In some cases, we may need to consider in more detail how best to overcome the difficulty or seek advice from expert organisations that can assist with signposting and other forms of support.

13.4 There may be occasions where there is good reason to apply discretion. We will always consider the individual circumstances of the individual involved when making our decisions.

13.5 An equality impact assessment has been completed for this policy.

14. Appeals

14.1 Applicants can request a decision about their request/ application is reviewed by contacting the Customer Hub. They must set out the reasons why they are appealing the decision. A more senior officer to the one who made the original decision will review the case (see appeals procedure).

15. Ensuring we are doing what we say...

- 15.1 We operate robust systems for checking our approach to tenancy management and new lettings is fair. We audit cases to ensure the policy is being applied consistently and fairly. We also have an appeals procedure, which allows customers to seek a review of a decision, if they feel this policy has not been applied fairly.

16. It is linked to...

Internal:

- Allocations Policy
- Tenancy Policy
- Empty Homes Policy
- Domestic Abuse Policy
- Appeals procedure
- Housing Counter Fraud Policy

17. Related Law & Regulations

Legislation/Regulation	Relevance to This Policy
Localism Act 2011	Amended Succession rights of new social housing tenants in England from effect of April 2012 statutory succession rights to secure tenancies created after this date are now limited to the spouse/civil partner/partner of the deceased.
Housing Act 1985	The rules relating to secure tenancies are found in the Housing Act 1985
Housing Act 1988	The Housing Act 1988 allows succession by a spouse/civil partner/partner on the following conditions (in summary): • the tenancy must be a sole periodic assured tenancy and • the spouse/civil partner or cohabiting partner must have been occupying the dwelling as an 'only or principal home' immediately before the tenant's death and • there must have been no previous succession as defined under the Act.

Immigration Act 2014	The Right to Rent regime ('R2R') was introduced by the Immigration Act 2014 ('the Act') as part of the government's policy to control illegal immigration with the aim of controlling access to key services including housing.
Immigration Act 2016	Under the 2016 Act, a criminal offence is committed if the property is <u>occupied</u> by an adult who is disqualified, as a result of their immigration status, from occupying premises under a residential tenancy agreement. The adult does not need to be named on the tenancy agreement for this act to apply. Unlike the civil penalty scheme for the right to rent checks under the Immigration Act 2014, this offence also applies in relation to residential tenancy agreements entered into <u>before</u> 1 December 2016.