

Housing Services Assignment Policy

Policy	Assignment Policy
Scope:	This policy outlines the criteria needed for an assignment of tenancy.
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Related Policies:	<ul style="list-style-type: none"> • Succession Policy • Mutual Exchange Policy • Tenancy Strategy • Tenancy Policy

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1.0 Introduction

The terms 'we', 'us', and 'our' refer to St Albans City and District Council (SADC).

Assignment means the transfer of the tenancy from one tenant to another tenant/occupant and must be done by a legal document, called a Deed of Assignment. Assignment is not on death, which is known as succession.

In general, a secure tenant may NOT assign their tenancy (Section 91 (1) of the Housing Act 1985).

There are 3 exceptions to this strict rule under Section 91 (3) where a secure or flexible tenant can pass on their tenancy to another member of their household during their lifetime. This can be done in the following circumstances:

- a) By an order from the court following relationship breakdown or orders relating to children.
 - The assignment is pursuant to a Court Order (Property Transfer Order) made under Section 24 of the Matrimonial Causes Act 1973 (married couples only) or under Section 53 and schedule 7 of the Family Law Act 1996 (married or co-habiting couples). Civil partners are now included (Civil Partnership Act 2004).
- b) The assignment is to a person who would be qualified to succeed in the event of the tenant's death, such as a spouse, partner, or family member.
- c) By mutual exchange.

1.1 Furthermore:

The person who assigned the tenancy becomes the tenant of the landlord under the same agreement.

A tenant's right to assign depends on their tenancy type.

Any outstanding balances in relation to the property must be cleared prior to the assignment taking place.

A tenant can only assign their tenancy before they move out permanently. For example, if a tenant is permanently moving to a residential care home, they need to assign their tenancy before they move.

- 1.2 Landlord's Consent:** It is also a condition of St Albans City and District Council tenancy agreement that 'you must not assign the tenancy without first getting our written permission'. If a tenant has completed a deed of assignment but not received

the Council's permission, this is a breach of tenancy, and the Council will have a ground for possession against the purported assignee.

This permission cannot be withheld unreasonably, although we would not grant permission if the assignment would lead to under/over occupation of the property. If permission is not granted and the assignor does not agree with the decision, the assignor can request that their case is taken to the Housing Review Panel to consider.

2.0 Council Tenancy Assignment Rights

- 2.1** An introductory tenant cannot assign by way of mutual exchange but can assign under family law proceedings or assign to a potential successor.
- 2.2** A demoted tenant can only assign under family law proceedings.
- 2.3** An attempt to assign for any other reason does not transfer the tenancy. The tenancy will remain with the original tenant. If the original tenant moves out and no longer occupies the property as their only or principle the home, the landlord is able to end the tenancy by serving a notice to quit.

3.0 A) Assignment in pursuance of a Court Order

- 3.1** This action is applicable to married or co-habiting couples and civil partners.
- 3.2** This Order can be made by the County Court or High Court and is often made in proceedings for divorce or judicial separation but now under the Family Law Act, an order can be made for co-habiting couples who separate. This could change a joint tenancy to a sole tenancy or sign a tenancy over to the person who still resides in the property.
- 3.3** When the tenancy is assigned in the case of a Property Adjustment Order in matrimonial proceedings, the tenant is only a successor when the assigning spouse is a successor.

4.0 B) Assignment to a Potential Successor

- 4.1** A sole tenant can assign their tenancy before their death, rather than wait for a succession. The tenancy can be assigned to a person who would be qualified to succeed the tenancy if the tenant had died immediately before the assignment. Refer to the Succession Policy for more information.
- 4.2** A joint tenant cannot assign to a potential successor. When a joint tenant dies, the surviving tenant inherits the tenancy by survivorship.
- 4.3** Assignment must happen before someone moves on a permanent basis. The tenancy loses its security of tenure if the tenant moves out before the assignment.
- 4.4** The Assignee then counts as a successor to the property and there is no further right of succession to the property.

- 4.5** If a family member is entitled to the assignment of the tenancy as a potential successor they will be asked to move to a smaller property, if the property they are occupying would exceed their housing requirements had the original tenant died or moved out of the property.

4.6 Introductory and Demoted Tenancies

An introductory tenant cannot assign by way of mutual exchange but can assign under family law proceedings or assign to a potential successor.

A demoted tenant can only assign under family law proceedings.

5.0 C) Mutual Exchanges

- 5.1** Any SADC tenant with a secure lifetime tenancy or a secure flexible tenancy has the right to apply for a mutual exchange with another social housing tenant or registered provider within the UK.
- 5.2** Tenants can apply for mutual exchange through HomeSwapper.
- 5.3** SADC have 42 calendar days from the date all documents are received for a Mutual Exchange to make a decision.
- 5.4** When an exchange has been approved to take place, all parties must sign a deed of assignment. This legally transfers a tenancy to another tenant who takes over the tenancy. Each party will take on all the responsibilities and outstanding liabilities of the new property but retains their existing tenancy.
- 5.5** Demoted tenants cannot exchange.
- 5.6** Please see the mutual exchange policy for more details.

6.0 Unauthorised Assignment

If there has been an attempted assignment that does not fall into the three statutory categories, then there has been no assignment at all. The person(s) in residence will be unauthorised occupants and the council will commence possession proceedings.