

Tenancy Changes Policy



Who this policy is for

This policy is for all tenants of Wydean Housing Association. Because it's about tenancy changes, it does not apply to leaseholders or shared owners.

Introduction

This policy explains what different changes in tenancy are and how we deal with them. It includes:

- how to end a tenancy
- how to change the names on a tenancy
- what happens to a tenancy when a relationship ends
- what happens to a tenancy when someone dies
- what happens when a property is abandoned.

Terms we use in this policy

NTQ (notice to quit): formal notice that the tenancy will be ended, usually by a specific date. An NTQ can be given by the tenant or the landlord.

Transfer of property order: an order granted by the court that changes the names on a tenancy agreement.

Assignment: when a tenant asks for the tenancy to be given to someone else.

Deed of assignment: a legal document used when a tenancy is transferred from one person to another.

Succession: when a tenancy is passed to another person in the household after the tenant named on the tenancy agreement dies.

Abandonment: when a tenant leaves the property before the tenancy has ended, usually without letting the landlord know.

When a tenant ends the tenancy

A tenant who wants to end their tenancy must give 4 weeks' notice in an NTQ that ends on a Sunday. The NTQ is effective as soon as we receive it.

We have a standard NTQ form to help tenants. If we can't accept the NTQ because it has mistakes or information missing, we'll let the tenant know so they can correct it.

When we have NTQ from a sole tenant or both joint tenants, we may accept a shorter notice or a notice ending on a day other than a Sunday.

We encourage both people on a joint tenancy to sign the NTQ. However, if only one tenant signs it will still



be valid and will end the tenancy, even if the other isn't aware of it. If a tenant stays in the property, we'll use our Left in Occupation policy to decide whether they can stay.

We may extend the notice period on an NTQ if a tenant asks us to.

If a tenant doesn't leave the property on the date agreed, we'll continue to charge them for rent and service charges at their usual rate until they return the keys.

Changing the names on a tenancy

We do not allow tenants to sublet their property under any circumstances.

Unless the tenancy agreement says otherwise, we'll only allow a tenancy to be assigned to another person when the court has made a transfer order under the Matrimonial Causes Act 1973, the Children Act 1989, the Family Law Act 1996, or

- (i) we have given our written consent for a mutual exchange, or
- (ii) the person the tenancy is to be assigned to has a right to succeed to the tenancy if the tenant died.

Requests to mutually exchange (swap properties) are covered by our Mutual Exchange Policy.

Our tenancy agreement allows a tenancy to be assigned to another person if they have a right to succeed to the tenancy. This right is limited, and we advise tenants to check that the person they propose to assign the tenancy to meets the criteria. Only one succession or assignment is allowed, which must be done under a deed of assignment.

In exceptional cases we'll consider requests to assign a tenancy from joint names to a sole name and from a sole name to joint names, even when there is no right under the tenancy agreement to transfer the tenancy.

We may refuse a request because, for example:

- there has already been an assignment or succession (including succession by a surviving joint tenant) and there is no court order directing us to change the tenancy
- the tenant owes us outstanding rent arrears or other debts
- legal proceedings have been initiated against the current tenant or there are other tenancy breaches
- the person who is applying to join the tenancy does not have the right to rent, has no recourse to public funds or no right to remain in the country
- the person applying to become a joint tenant or the person applying to have the tenancy in their own name would not qualify to join the housing register
- the person applying to be joined as a tenant is not the current tenant's spouse or partner
- there is a valid court order for possession of the existing tenant's home
- we have reason to believe that one of the parties is being pressured into changing the names on the tenancy
- the property is not suitable.

If we agree to change the named tenants on a tenancy agreement, we'll do this by assignment.



If a tenant changes their name, we can record this without the need for an assignment as the person who holds the tenancy remains the same.

Examples of where we'll approve changes include:

- marriage (on presentation of the marriage certificate)
- deed poll (on presentation of order)
- gender re-assignment
- witness protection (on evidence from the Witness Service or the police).

When a relationship ends

We advise couples who are permanently separating to seek independent legal advice about how this will affect their tenancy.

Tenants who are separating need to tell us:

- who is still living in the property
- what each tenant wants to happen to their home and if they agree
- if they are married, in a civil partnership or co-habiting
- if there are children living permanently in the property
- if the household is in receipt of any benefits
- if there has been any domestic abuse or violence.

What we can do depends on:

- the name(s) on the tenancy
- the type of tenancy
- if there has been any previous assignment or succession.

If tenants find it hard to agree, they may be able to apply to court for a decision. Citizens' Advice or Gloucestershire Law Centre can advise tenants about this.

Matrimonial occupation rights, now called home rights, apply to married couples whether the tenancy was in both names or one.

The County Court has the power to exclude a joint tenant from the home under the Family Law Act 1996. The court may also transfer a tenancy to the former spouse or co-habitant of a tenant. This doesn't need to be done through a deed of assignment as the court will serve us with the notice of application and if necessary we'll be able to make representations.

The Family Law Act 1996 says the spouse or civil partner of a tenant has a right to live in the matrimonial home and be recognised as a tenant. Therefore, if a married couple separate and the tenancy is held in only one of their names, their spouse or civil partner can stay in the home for as long as the tenancy continues. We can't end the tenancy simply because the tenant named on the tenancy agreement no longer lives in the property.



These home rights end when the couple divorce, unless the spouse or civil partner applies to the court during the marriage for the rights to continue, or to resume the rights after the divorce.

Couples who live together but who are not married or in a civil partnership do not have home rights.

If one of the people in the relationship is experiencing domestic abuse, they, or their solicitor, can apply for:

- an injunction (a 'stay away' order)
- an occupation order to establish who has the right to remain in the home.

Please refer to our Domestic Abuse Policy for more information.

When a tenant dies

A tenancy does not automatically end when a tenant dies. If there's no statutory successor, the tenancy becomes part of the deceased tenant's estate.

The executors of the estate or the personal representatives of the tenant who died can give us NTQ. This must be served at the property and the Public Trustee's office unless the executors have a formal grant of probate in which case the NTQ must be served on them.

If the next of kin are not able or willing to sign the NTQ, we'll give the Public Trustee 4 weeks' notice with immediate effect. We may then take back possession of the property or seek a possession order from the County Court.

If someone who is not entitled to succeed lives in the property, we'll give NTQ to the personal representative of the person who died before we start proceedings to possess the property.

If someone is still living in the property when the NTQ ends, we'll start legal proceedings and get an order for possession that would be enforced by a warrant for possession if necessary.

We'll recover any debts owed to us from the deceased tenant's estate and/or anyone who is living in the property after the NTQ ends.

Abandonment

When a tenant abandons a property and leaves it unoccupied, or we suspect a property has been abandoned, we'll serve NTQ and seek to recover possession as soon as possible.

When the NTQ ends, if it's clear the property is unoccupied we'll change the locks and take possession of the property. If there's any uncertainty, we'll ask the County Court for a possession order.



Unauthorised occupation

If a property is no longer the tenant's only or principal home, the tenancy loses its security of tenure (assured or enhanced assured status) which means we can serve NTQ. We'll seek possession by court order and anyone remaining in the property, including the former tenant, will have to leave.

If possible, we'll name the unauthorised occupier as a defendant in the court proceedings so we can seek damages for use and occupation after the NTQ ends.

If the tenant has unlawfully sublet the property or left and allowed others to live there, the tenancy loses its security of tenure (assured or enhanced assured status) and can never be regained, even if the tenant moves back in. The tenant may also be committing an offence under the Prevention of Social Housing Fraud Act 2013. We can end the non-secure tenancy by serving NTQ and will seek possession by court order.

Rent arrears

If a tenancy is in the name of one person, they are responsible for any arrears. If a tenancy is in joint names, both tenants are equally responsible for any arrears.

If the names on a tenancy agreement change because of a court order, any arrears will apply to both tenants.

There may be time when a court will decide who is responsible for outstanding arrears, for example when a relationship ends.

A deed of assignment may also set out who is responsible for paying any existing rent arrears at the time of assignment.

Review and complaints

Tenants can ask us to review a decision to refuse tenancy changes. If they do, they'll need to give us more information to support their appeal. The appeal should be in writing or dictated over the phone to a member of staff within 5 working days (weekdays not including public holidays) of the date we refused their request to change the tenancy.

A housing services manager will decide whether the decision to refuse the tenancy change was reasonable and will write to the tenant to let them know if they agree with their appeal. We'll take no more than 10 days to do this unless we've agreed a different timescale with the tenant.

If the tenant is still unhappy with our decision they can make a complaint under our Complaints, Comments and Compliments Policy.

