



JOINT / SOLE TENANCIES POLICY

Responsible Director: Director of Homes and Wellbeing

Responsible Manager: Head of Homes and Wellbeing

Last updated: May 2019

Next update: May 2022

B07 Joint/Sole Tenancies

1. Policy

1.1 New Customers

- 1.1.1 It is NCHA policy to grant joint tenancies to applicants who are couples who may be married or co-habitees, gay and lesbian partners, parents and children, brothers and sisters and flat sharers.
- 1.1.2 It is NCHA policy to grant joint tenancies to existing joint customers who are transferring or have applied/been nominated or referred jointly to the Association.
- 1.1.3 It is NCHA policy to offer sole tenancies only where both parties want the tenancy created in one sole name or where only one person has applied, been nominated or referred and cannot prove that they are married or have been living with a partner for the previous twelve months. In offering sole tenancies the Association will advise both parties to seek independent advice on their individual rights.
- 1.1.4 Whilst both parties must agree if a joint tenancy is to be granted, there are some advantages to NCHA in cases of domestic violence, where the couple are married, if there is a joint tenancy. (See Section 4).
- 1.1.5 Where a joint tenancy is granted all parties must be made aware that there is joint and several liability for the tenancy.
- 1.1.6 Where a joint tenancy is granted all parties MUST sign the tenancy agreement.

1.2 Existing Customers

- 1.2.1 In considering requests for changes to the existing tenancy, NCHA will at all times, seek to satisfy the wishes of the customers wherever this is permissible within the law.
- 1.2.2 The law concerning joint and sole tenancies is very complex and any request for changes to tenancies must be considered very carefully. The important thing to remember and to stress to customers is that a tenancy agreement is a legal document which conveys an interest in land and therefore is not something which can easily be changed or amended.
- 1.2.3 The Service Manager – Estates, must be satisfied that in giving permission for changes to existing tenancies the occupants are not receiving unfair advantage over other waiting list applicants and that NCHA are maintaining best use of housing stock.
- 1.2.4 Detailed in the next section are a number of common requests and guidance notes on how NCHA should respond.

2. A sole customer wishes to have a joint tenancy with another occupant.**2.1 Assured & Secure Tenancies**

- 2.1.1 Sole customers must put their request in writing in the first instance. They must give full details of the person(s) they wish to share the tenancy with, how long they have lived there and the names of any other people in the household.
- 2.1.2 Before agreeing to the creation of a joint tenancy the following factors must be considered:
- Proof that the other party has lived at the premises for the last 12 months. (This is not necessary in the case of spouses, but the customers must produce their Marriage Certificate). In exceptional circumstances, and at the discretion of the Service Manager – Estates, a joint tenancy can be granted where there has been less than 12 months joint occupancy.
 - That both parties agree to a joint tenancy and are they each aware of the legal implications.
 - There are no rent arrears. This will include the Estates Officer/Assistant checking any previous tenancy history for FTA's/debtors on the person who has asked to become joint customer.
 - That there has been no history of Anti Social Behaviour with any previous held tenancies.
- 2.1.3 If there are rent arrears outstanding, the customer must be advised to clear these in full before the request is considered.
- 2.1.4 Where the application is for a friend or member of the family, all parties should be interviewed to check the accuracy of the request and to ensure both parties agree to the change. A written and signed note of the information gathered at the interview should be placed on the tenancy file within Open Housing.
- 2.1.5 If consent to create a joint tenancy is given, the parties should be given a letter explaining the implications. (Sample letter - Appendix B.7.1).
- 2.1.6 A change from sole to joint tenancy creates a new tenancy. If it is decided to consent to the request the sole customer will be required to sign a Deed of Surrender (Appendix B.7.2). The Deed of Surrender takes effect immediately; therefore, it should be signed immediately before the joint customers sign their new Tenancy Agreement. A new Tenancy Agreement is then drawn up and signed by both parties with the tenancy date being the date on which the new tenancy is to commence. If the previous sole customer was a secure customer and has not exercised their Right of Succession previously, the new joint tenancy remains secure, otherwise the new tenancy becomes assured.
- 2.1.7 The appropriate records on Open Housing should be amended to show the new tenancy details.

- 2.1.8 The customers will be required to pay the higher rent if the Association has implemented an increase.
- 2.1.9 It is entirely at NCHA's discretion whether to agree to a change from a sole to a joint tenancy. However, if consent is not given, a letter explaining the reasons for this must be sent to the customer, with a copy kept on the customer's file. The letter must also advise the customer of his/her right to review the decision by writing to the Head of Affordable and Social Housing. The Head of Affordable and Social Housing will carry out the review having had no previous involvement with the case. Their decision on the review will be final.

3. Joint tenancy where one joint customer has moved out and voluntarily relinquishes her/his interest.

3.1 Assured & Secure Tenancies

- 3.1.1 With the written permission of the Association a Secure Joint Tenancy and an Assured Joint Tenancy may be terminated and a new tenancy created in the sole name of the remaining occupant. .
- 3.1.2 Where one customer moves out and is willing to release his/her interest to the remaining customer the Tenancy must be terminated by service of a valid notice to quit by either or both customers. (*See 5.5 for guidance*). A new Assured Tenancy may then be created in the Sole name of the remaining customer. The remaining customer must understand the changes in Terms and Conditions and be advised of the new rent charges in writing.
- 3.1.3 In the case of a Secure Tenancy no new tenancy is granted if the reason for the change is a result of the death of one of the customers. The transfer of interest is deemed as a succession and the procedures outlined in the NCHA Succession Policy should be followed.
- 3.1.4 If there is no longer a Right of Succession i.e. the single right of succession has already been utilised; permission may still be granted but the Secure Tenancy must be terminated by service of formal notice to quit by either customer and a new Assured Tenancy created in the Sole name of the remaining customer. The remaining customer must understand the changes in Terms and Conditions and be advised of the new rent charges in writing.
- 3.1.5 A clear rent account should be a pre-requisite before consent is granted for any changes from Joint to Sole.
- 3.1.6 If NCHA refuses the transfer (which we are able to do) a letter explaining the reasons for this must be sent to the customer, with a copy kept on the customer's file. The letter must also advise the customer of his/her right to request a review of the decision by writing to the Head of Affordable and Social Housing. Their decision on the review will be final.

4. Joint tenancy where one customer moves out and cannot be traced4.1 Assured and Secure Tenancies

4.1.1 NCHA has no power to transfer the tenancy to one party or another without the agreement of both parties, unless:

a) the remaining party serves a valid Notice to Quit on NCHA who can then grant him/her a new tenancy on its expiry.

or

b) there is a Court Order so instructing (e.g., in cases of matrimonial breakdown).

4.1.2 If one joint customer advises us that the other has left, the joint tenancy continues although the file should be noted to the effect that it is believed that one customer is no longer in occupation. Both joint customers will remain responsible for the rent and if legal action is taken both parties must be cited on Notices of Seeking Possession and Particulars of claim court applications.

4.1.3 The remaining joint customer should be advised they remain jointly and severally liable for all rent and any arrears and this will remain the case until they can trace the other joint customer or until they follow 4.1.1(a). The remaining customer should be advised to seek independent legal advice. The joint customer who has left remains jointly and severally liable for all rent and any arrears although the practicalities of enforcing their obligations will be difficult if their current whereabouts are unknown.

5. Joint/Sole Tenancies: Domestic Violence Cases5.1 Assured & Secure Tenancies

5.1.1 The Association's ability to take proceedings against the perpetrator in domestic violence cases involving married couples is extremely restricted if the victim is a sole customer.

5.1.2 A married victim who is a sole customer is unlikely to be able to end the tenancy unilaterally if the perpetrator (the spouse) continues to occupy the home, due to the provisions of the Matrimonial Homes Act 1983 which grants "rights of occupation" to both spouses.

5.1.3 Joint customers however are able to end a tenancy unilaterally without the knowledge or agreement of the other customer. (The law relating to joint tenancies applies to both married couples and co-habitees).

5.1.4 If the victim in a domestic violence case wishes to terminate the tenancy, he/she can do so by serving a Notice to Quit.

5.1.5 The Notice to Quit must comply with the usual rules:

- It must be in writing
- It must give at least 4 weeks' notice

- It must comply with any express provision in the Tenancy Agreement relating to the service and validity of Notices.
- It must end either on the same day on which the tenancy began or on the date the rent is paid or the day before.

5.1.6 On expiry of the Notice to Quit the tenancy ends and the perpetrator has no right to remain in occupation.

5.1.7 Alternatively NCHA may also seek possession using Ground 14A of Schedule 2 to the Housing Act 1988 if the perpetrator remains in occupation of the property.

5.1.8 The Association's solicitor can then be instructed to commence possession proceedings.

5.1.9 Once NCHA has possession of the premises, a new sole tenancy can be granted to the remaining customer. Joint tenancies are clearly advantageous to NCHA in cases of domestic violence involving married couples, and both parties should be advised on the implications if they request the creation of a sole tenancy.

n.b. In the case of Sims v Dacorum Borough Council 2014, it was held by the Supreme Court that one customer can terminate a joint tenancy by giving notice to quit without the consent of the other. The landlord is then free if he/she wishes to grant a sole tenancy to either customer. As the consent of both parties is not required, NCHA may not be fully aware of all the facts surrounding the case, therefore this course of action should only be taken in exceptional cases and with the approval of the Head of Affordable and Social Housing/Estates Service Manager.

6. Joint tenancy where tenancy is assigned by the courts.

6.1 A Court may, in matrimonial cases determine which spouse the tenancy should be assigned to. No new tenancy is created but the remaining customer does not become a successor.

6.2 A Deed of Assignment must be completed and signed by both joint customers, and a copy of the Court Order must be attached to the Deed of Assignment.

7. Relationship breakdown

7.1 Where joint customers report a relationship breakdown and one of the customer's requests re-housing, the policy of the Association is to treat the customer who is moving out as a new applicant not a transfer applicant.

7.2 The outgoing customer may be issued with a Housing Application Form which should be processed in the normal way and in accordance with the Allocations Policy.

8. Sole customer departs and leaves other members of the household in occupation.

- 8.1 The remaining household are in a vulnerable position and it is the Head of Affordable and Social Housing/Estates Service Manager responsibility to decide what course of action to take given the full knowledge of the circumstances.
- 8.2 If the outgoing customer can be persuaded to assign his/her interest to the remaining occupant by Deed of Assignment, the remaining occupant could, in the case of a secure tenancy, become a successor if the remaining occupant would have been qualified to succeed the customer, had the customer died immediately before the assignment (Section 91(3) c) of the Housing Act 1985). If the tenancy agreement is silent on whether an assignment can take place, it is an implied term of such a periodic assured tenancy that a customer will not assign the tenancy unless he or she obtains NCHA's consent. If there is a term within the tenancy agreement prohibiting assignment then that express term takes precedence.
- 8.3 If the customer is not willing to assign the tenancy but the remaining occupant is the customer's spouse, he/she will retain the right to occupy the property under the Matrimonial Homes Act 1993 until he/she is divorced or a court orders otherwise. A remaining spouse can also pay rent and this must be accepted by NCHA on behalf of the customer. NCHA would only be able to regain possession against the customer if one of the usual grounds for possession applied.
- 8.4 If the remaining occupier is not the customer's spouse then:
- If the customer surrenders or determines the tenancy NCHA can either bring trespassers possession proceedings against the remaining occupiers or grant them a new tenancy.
 - If the customer does not surrender or determine the tenancy but merely ceases to occupy, NCHA should serve a Notice of Seeking Possession on the customer (even if it is an assured tenancy as an assured customer will lose security of tenure if he/she has ceased to occupy) and bring possession proceedings against the customer for failure to occupy. NCHA will need evidence that the customer has ceased to occupy. The Possession Warrant can be executed against the remaining occupiers even if they were not named in the proceedings. Alternatively NCHA can grant the remaining occupiers a tenancy.
- 8.5 If it is felt that a new tenancy should be granted, the Service Manager Estates must be satisfied that the occupants are not receiving unfair advantage over other waiting list applicants. It is recommended that a new tenancy only be offered where the person(s) left in occupation are part of the "customer's" family and have lived at the property as their principal home for the last 12 months, or a spouse who has the right to occupy under the Matrimonial Act 1983 (see 4.2 above).

9. Name changes

- 9.1 When a customer changes name through marriage/divorce, by Deed Poll or otherwise they should be asked to confirm the change in writing. The letter or a copy of the Deed Poll should be attached to the Tenancy Agreement and confirmation sent to the customer. The computer records should be amended to reflect the change.
- 9.2 If Notice of Seeking Possession is subsequently served on a customer who has changed his or her name, or possession proceedings are begun, the Notice, Particulars of Claim, and Summons should be worded "Mr X Y Z (formerly known as Mr A B C)". A copy of the letter or Deed Poll should be taken to any subsequent court hearing in case it has to be produced as evidence.

APPENDIX B.7.1

Names: (1) (2)

Address:

Date:

Change from Sole Tenancy to Joint Tenancy

We the undersigned request the creation of a joint tenancy of
(address).....

The Terms of the tenancy have been explained to us and we are aware that we are both responsible for ensuring they are kept.

We accept the responsibility for making sure the rent is paid and understand that we are jointly liable for the full amount of any arrears that become due.

Signed: (1).....Joint Customer

(2) Joint Customer

Witnessed By: Estate Officer

APPENDIX B.7.2

DEED OF SURRENDER

This **DEED OF SURRENDER** is made the _____ day of _____ 20____
BETWEEN NOTTINGHAM COMMUNITY HOUSING ASSOCIATION LIMITED ("the
Landlord") of the one part and (customer's name) (address of customer) ("the
Customer") of the other part.

WHEREAS:-

- 1 By an Agreement (hereinafter called "the tenancy") dated the _____ between the Landlord of the one part and the customer of the other part the Landlord granted an Assured/Secure Tenancy of (address of property) on the terms and conditions and subject to the payment of rent as set out in the aforementioned tenancy.
- 2 The Customer has agreed with the Landlord to surrender the premises comprised in and let and/or demised by the Tenancy together with all rights of title or interest of whatever nature therein or thereunder in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH:

- (1) In consideration of the sum of £0.05 pence now paid by the Landlord to the Customer (receipt of which the Customer hereby acknowledges) the Customer hereby surrenders and assigns unto the Landlord all that premises comprised in and demised by the Tenancy and all the rights and interest of the Customer therein or thereunder howsoever arising to the intent that the term and Tenancy created by the Tenancy may hereinafter automatically merge and be extinguished in the freehold reversion in the premises.
- (2) The Landlord hereby releases the Customer from all future costs, claims and demands in respect of the said Tenancy but without prejudice to any existing rights or claims of the Landlord.

IN WITNESS whereof the Parties hereto have executed this surrender as a deed on the day and year first before written.

SIGNED AS A DEED of NOTTINGHAM COMMUNITY)
HOUSING ASSOCIATION LIMITED)
 acting by a Director and its)
 Secretary/two Directors)

SIGNED by the said)
 as his deed in the presence of)