

Landlord Services Creation of Joint Tenancy Policy

Version 2

Document Control

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1. Introduction

If a tenancy is in a sole person's name, the tenant can request that the tenancy be put into joint names. A joint tenancy can only be granted to a couple who are living together either as a married couple, a civil partnership, or in a common-law relationship.

If a couple are in a common-law relationship, the council have agreed that they should have lived together at the tenants address for a minimum of twelve months, have no rent arrears for a minimum of six months, and have no other current tenancy management issues at the address.

In the case of married couples or civil partners, the rent account also needs to be clear for six months and there should be no other management issues linked to the address. However, if a marriage certificate or civil partnership document can be provided, there is no waiting time before the application for a joint tenancy can be made.

2. Purpose

This policy sets out our approach to joint tenancies. More specifically:

- changing a sole tenancy into a joint tenancy

The aim of this policy is to ensure that:

- Requests for a creation of joint tenancy are dealt with in a swift and consistent manner.
- Joint tenancies are created legally.

3. Definitions

LSM	Landlord Services Manager
LSO	Landlord Services Officer
CJT	Creation of Joint Tenancy
Sole Tenancy	A sole tenancy refers to a tenancy agreement only signed by one person.
Joint Tenancy	A joint tenancy is where two people have signed the tenancy agreement, and therefore have equal responsibility for maintaining the tenancy.
NTQ	A Notice to Quit (NTQ) is a legal document used to end a tenancy. This can be served by either the tenant(s) to the Landlord, or the Landlord to the tenant(s) by way of terminating the tenancy. In the case of joint tenancies, it only takes one tenant to serve NTQ in order to formally end the tenancy for both parties. Similarly, the Landlord only has to serve a NTQ on one of the joint tenants to formerly end the tenancy.

4. Legislative Framework

Housing Act 1985, Part IV

The Enrolment of Deeds (Change of Name) Regulations 1994

Matrimonial Causes Act 1973

Civil Partnership Act 2004

The Marriage (Same Sex Couples) Act 2013

5. The Policy

Important Advice

- 5.1. Before formally requesting a creation of joint tenancy, we would advise that the sole tenant seek their own independent legal advice.
- 5.2. The applicant/ proposed tenant (unless married/ civil partners) would need to be able to prove residence at the address for a minimum of a year to be considered as a joint tenant. LBBDD may carry out their own checks, including a credit check on the applicant/ proposed tenant.
- 5.3. If the tenant **is not** in receipt of Housing Benefit/ Universal Credit, the rent account needs to be clear for a minimum of six months for a creation of joint tenancy to be considered, irrespective of the relationship status between the tenant and applicant/ proposed tenant.
- 5.4. If the tenant **is** in receipt of Housing Benefit/ Universal Credit and there are rent arrears on the account, the tenant needs to evidence consistent rent payments that are leading to a reduction in rent arrears periodically, for a minimum of six months.
- 5.5. Joint tenants are jointly and individually liable to comply with all tenancy conditions, including payment of rent. Therefore, for example, if one tenant breaches a condition, they will both be held responsible.
- 5.6. If one tenant were to leave the address, the tenant left in occupation would still be liable for complying with all conditions of tenancy, including full payment of rent and any other property associated costs.
- 5.7. If you receive benefit, you must notify the relevant benefit service and/or Department of Work & Pensions (DWP) of your change in circumstances, as a joint tenancy may affect your benefit entitlement.
- 5.8. If your relationship breaks down, we as the Landlord will not be able to remove one joint tenant from the tenancy by way of assignment, as there is no right to assign a joint tenancy from one tenant to another. However, the joint tenants can collectively assign to another household member that meets the eligibility criteria for assignment under Section 91(3)(c) of the Housing Act 1985.

- 5.9. If your relationship breaks down, you may be in your best interest to apply to the courts for a Property Adjustment order. Alternatively, you can sign a Notice to Quit (NTQ) to end the tenancy, leaving it to the discretion of the Landlord to grant a new sole tenancy for the remaining tenant. Please be advised that if you end your tenancy by way of NTQ and are granted a new sole tenancy, you may be asked to move to a more suitable council property if you are under-occupying the current address, or if the current property is adapted and adaptations are not required by anyone left in residence at the address.
- 5.10. Both joint tenants have equal rights to the tenancy. It only takes one tenant to serve an NTQ, which would end the tenancy for both.
- 5.11. Successors to a tenancy are not eligible for the creation of joint tenancy (CJT), as this would create a further succession right. Upon receipt of a CJT application, checks will be carried out to ensure that there has been no prior succession to the tenancy.
- 5.12. If a joint tenancy is granted and one tenant dies, the other will become the sole tenant by way of survivorship. There will be no further right of succession.
- 5.13. There is no right to assign a joint tenancy to a potential successor, unless the 'joint to sole' tenancy has been court ordered.
- 5.14. The tenant can formally request a creation of joint tenancy via www.lbbd.gov.uk by searching 'Change or end your tenancy'. Select the 'Add partner/ spouse to tenancy' dropdown option, and this will take you through to the relevant application page. Complete all fields and upload all necessary documentation/ evidence to support your application.
- 5.15. Alternatively, a creation of joint tenancy request can be made by calling the contact centre. A request for call back will be logged to the appropriate Landlord Services Officer (LSO).
- 5.16. A creation of joint tenancy request will only be considered if the request has come directly from the tenant.
- 5.17. A property inspection will be carried out at your address as part of the creation of joint tenancy application process.

Evidence

- 5.18. If the couple can provide evidence of either a marriage certificate or civil partnership document, then there is no waiting period.
- 5.19. If the couple is in a common law relationship, the applicant/ proposed tenant will need to provide proof that they have resided at the address with the tenant for at least 12 months.

Exclusions

- 5.20. There may be some circumstances when the joint tenancy will be denied because the proposed joint tenant has children and if they moved into the property it would make them statutory overcrowded. If this is the case, we would advise the tenant that we could not stop the partner and children from moving into the property, but we would not grant a joint tenancy.
- 5.21. A joint tenancy will not be granted if the proposed tenant does not have indefinite leave or extended leave to remain in the country, or does not meet the eligibility criteria set out in the LBBB Housing Allocation Policy (See Appendix, item 4). If this is the case, or if further clarification is required, the application should be referred to the Allocations Team who will advise whether to grant the joint tenancy.
- 5.22. A joint tenancy will not be granted if the current sole tenancy started by way of a succession, following the death of the previous tenant.
- 5.23. A joint tenancy will not be granted if the Landlord has or intends to initiate possession proceedings against the tenancy for rent arrears, antisocial behaviour, or any other breach of tenancy conditions.
- 5.24. In the case for tenancies linked to properties with additional terms and conditions (i.e. age restricted sites, or sites that provide extra care/ supported living), a joint tenancy may not be granted, or may only be granted if additional criteria is met.
- 5.25. We may not grant a joint tenancy if the applicant/ proposed tenant has a legal interest in other property.
- 5.26. The creation of a joint tenancy may be withheld until the tenant puts right any damage caused the property and/ or any other issues identified with the address during inspection of the property.
- 5.27. The creation of a joint tenancy may be withheld if the visiting officer detects safeguarding concerns.

6. Equality Impact Assessment

An Equality Impact Assessment has been carried out on this policy.

This involves assessing the effects of the policy and subsequent service provided to our customers in respect of their age, disability, race, religion/belief, sexual orientation, and/ or gender identity to ensure equal and fair access for all.

Conducting an Equality Impact Assessment assists us to make sure that the needs of people are accounted for when developing and implementing policies and services.

7. Appendix/ Related Documents

Document	Link
1. Online application form page	LINK
2. Housing Allocation Policy	LINK