

## **SAXON WEALD**

### **PROPERTY OCCUPATION POLICY**

**First Approved: June 2005**

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**Next Review: March 2021**

#### **1.0 Introduction and aim**

1.1 The aim of this policy is to help Saxon Weald manage the occupation of its properties effectively. This policy must be read in conjunction with the procedure for each of the following aspects:

- Starter (probationary) tenancies
- Termination of a tenancy
- Abandonment
- Assignment of tenancies
- Squatters and illegal occupiers
- Sub-tenants and lodgers
- Relationship breakdown

#### **2.0 Definitions**

2.1 Termination – ending a tenancy in accordance with legal requirements.

2.2 Surrender – bringing an end to the tenancy in accordance with the Saxon Weald tenancy agreement.

2.3 Abandonment – arises when a tenant vacates their property without giving notice or returning their keys.

2.4 Recharge – when the company seeks to recover costs from the tenant or former tenant for a specific service delivered.

2.5 Assignment – where a tenant transfers their interest in a tenancy to another eligible person.

- 2.6 Transferred Assured Tenant – a tenant who had a tenancy with Horsham District Council at the time of the transfer to Saxon Weald on 11 December 2000.
- 2.7 Assured Tenant – a tenant whose tenancy began after 11 December 2000.
- 2.8 Squatters and illegal occupiers – a person with no legal right or permission from the tenant or landlord to reside in the property.
- 2.9 Lodger – a person who has access to and shares all the facilities of a property and is treated as a member of the family or household and has no exclusive rights over any room.
- 2.10 Sub-tenant – a person who will normally have exclusive rights, usually by way of a tenancy agreement, over part of a property (for example a bedroom) but who may share other parts (for example the kitchen and bathroom).
- 2.11 Leaveable standard – the condition that Saxon Weald expects a property to be left in after a tenant has vacated.
- 2.12 Sub-letting – where a tenant vacates the property and lets it to a third party.
- 2.13 Starter tenancy – also called a probationary tenancy. This is the standard tenancy offered to all new Saxon weald tenants. After a period of one year, subject to no major breaches of the terms and condition of the tenancy, the tenancy automatically becomes a full assured tenancy.
- 2.14 Relationship breakdown – a non-violent permanent breakdown of the relationship in a household, which results in a tenant or household member requiring separate accommodation. This applies to married couples, civil partners and cohabiting couple.
- 2.15 Right to Rent check – this check must be carried out on all assignees and lodgers to ensure they are eligible for UK social housing.

### 3.0 Background

#### Legal requirements

- 3.1 The following legal requirements affect this policy:
- **Housing Act 1985**, gives the circumstances in which our tenants who had a tenancy with Horsham District Council at the time of the transfer to Saxon Weald on 11 December 2000 can assign their tenancy. It also affirms the right for a secure tenant to take in a lodger, providing the tenant continues to use the property as their main address and defines the criteria to be used to determine overcrowding.
  - **Housing Act 1988**, established assured tenancies and the succession rules that govern them. Provides a legal framework for dealing with abandoned properties, squatters and illegal occupiers and specifically bars tenants from sub-letting any part of the property without the consent of the landlord.
  - **Housing Act 1996 (section 15)** clarifies how a lease will change if assignment is granted. This Act requires local authorities to secure alternative (not

necessarily permanent) accommodation for those who are homeless.

Relationship breakdown is considered a key cause of homelessness.

- **Protection from Eviction Act 1977**, defines those who are legally entitled to occupy a property and stating the process we must follow to bring a tenancy to an end for these people.
- **Matrimonial Causes Act 1973 (section 24)**, gives grounds in which a court may order a change by assignment when a tenant divorces
- **Children Act 1989 (schedule 1)**, gives a court the right to assign a property to custodians of a child.
- **Family Law Act 1996**, giving further grounds in which a court may order a change by assignment, including in cases of domestic violence.
- **Legal Aid, Sentencing and Punishment of Offenders Act 2012**, criminalised squatting in residential property.
- **Prevention of Social Housing Fraud Act 2013** makes it illegal to sub-let the whole property.
- **Torts (Interference with Goods) Act 1977**, defines what responsibilities landlords have in removing a tenant's property and sets out how and when to dispose of it.
- **Civil Partnership Act 2004** – Schedule 9 of this Act amended the Family Law Act 1996 to ensure that civil partners have the same rights as married couples during relationship breakdowns.
- **Equality Act 2010** - provides a legal framework to protect the rights of individuals and advance equality of opportunity for all.

#### **4.0 Starter tenancies**

- 4.1 Saxon Weald aims to assist tenants to conduct their tenancy in a sustainable manner and to ensure that they take responsibility for the obligations the tenancy agreement places on them.
- 4.2 To help achieve this aim, following consultation with tenants and Horsham District Council, Saxon Weald adopted "starter tenancies" for new assured tenants in 2005. These are assured shorthold tenancies offered to new tenants for their first year.
- 4.3 A starter tenancy effectively means that a new tenant is 'on probation' for the first year of their tenancy, which gives an opportunity to ensure each tenant can conduct their tenancy in a satisfactory manner before granting them a full assured tenancy.
- 4.4 After the starter period, if a tenancy is deemed to have been conducted satisfactorily, it will automatically become fully assured on the first anniversary of the tenancy start date.
- 4.5 If, during the starter tenancy, Saxon Weald has evidence that there have been significant breaches of tenancy, the tenancy may be terminated or the probationary period extended.
- 4.6 Starter tenants do not have the right to transfer, exchange, assign, acquire or make improvements. There are different processes to ending the tenancy and to challenge the reasons for such action being taken by the landlord.

4.7 Tenants moving to a Saxon Weald property by way of mutual exchange, whether from an existing Saxon Weald property, or from another social landlord will take on the existing Saxon Weald tenancy and will not be given a starter tenancy.

## **5.0 Termination of a tenancy**

5.1 In accordance with the Saxon Weald tenancy agreement, all tenants are required to give at least four weeks' written notice that they are ending their tenancy.

5.2 Under certain circumstances and with the tenants' permission, we may consider terminating the tenancy before the end of the four week notice period.

5.3 Where a tenant does not give notice that they will be terminating the tenancy, but removes all their belongings and hands in the keys, the company may interpret the tenant's actions as an implied surrender. The surrender of the keys does not necessarily mean that the tenancy ends immediately and the four week notice period would usually still apply.

5.4 Where there is an implied surrender, we will always make the necessary investigations to determine that the tenant is not intending to return. Where this is in doubt, legal action will be taken to end the tenancy.

5.5 Where a tenant has died, four weeks' notice is still required. However, subject to the individual situation, the Move and Improve Manager will have discretion to vary the notice period in the interests of the family of the deceased.

5.6 If a tenant, or relative of a deceased tenant, requires a longer than the four week notice period this is usually acceptable. Rent will be still be due until the tenancy is terminated.

5.7 In all situations where the Move and Improve Manager makes a discretionary decision to vary the four weeks' notice period, a record of how and when the decision was made will be made for audit purposes.

## **6.0 Abandoned properties**

6.1 Saxon Weald aims to ensure that abandoned properties are left empty for the minimum period of time possible. This is achieved by taking swift action when there is evidence of an abandoned tenancy.

6.2 We will protect tenants whose properties may only appear to be abandoned from unlawful eviction. Tenants are advised to inform us if they are going to be absent from the property for more than four weeks.

6.3 All members of staff have a responsibility to be vigilant in identifying properties that may be abandoned and report any suspicions to the Housing Management team.

6.4 Once investigations have concluded that a tenant has abandoned the property, we will take possession of the property through legal possession proceedings.

6.5 Any items left behind by a tenant are still the property of the tenant. A Torts Notice will be issued which, upon expiry, will give us possession of the remaining items. We are required to make reasonable efforts to trace the tenant in order to return the goods, but if these fail, the possessions may be sold or destroyed.

6.6 The costs arising from abandonment, such as removing possessions, changing locks and achieving the leaveable standard will be recharged to the former tenant.

## **7.0 Assignment of tenancies**

7.1 An assignment is the legal transfer of a tenancy (not a property) to a third party.

7.2 The general principles are:

- Tenants must get our approval, in writing, before they assign.
- The assignor must be prepared to give up all the rights to the property and rights to re housing by Saxon Weald, unless they're becoming a joint tenant.
- Generally only one assignment is allowed. So if the current tenant succeeded, or was assigned the tenancy, there is no further right to assignment. (This does not include ex-Horsham District Council tenants who succeeded the tenancy prior to December 2000)
- The assignee must agree to pay the rent due, and keep to all terms and conditions of the tenancy agreement.
- The assignee must be able to provide proof they are eligible for UK social housing and have a Right to Rent.

7.3 Assignment will not normally be allowed to take place where there are rent arrears or other sundry debts outstanding. Consideration however will be given to the individual circumstances and each case must be judged on its merits and in line with equality and diversity issues.

7.4 The ability of a tenant to assign depends on the type of tenancy they hold. Details regarding this can be found in the Assignment Procedure.

## **8.0 Squatters and illegal occupants**

8.1 Saxon Weald has a responsibility to ensure that its properties are let to those in housing need in accordance with its Lettings Policy. We will aim to prevent squatters and illegal occupiers through:

- the appropriate security of empty properties; and
- minimising the time that a property is empty.
- regular estate inspections will bring to attention any empty, insecure properties

8.2 Any money paid to Saxon Weald by squatters or illegal occupiers will be accepted as charges for *use and occupation* only.

8.3 Legal action to re-possess the property will be instigated as soon as we are aware there it is being illegally occupied.

## **9.0 Sub tenants and lodgers**

9.1 All Saxon Weald tenants have the right to sub-let a part of their property subject to written consent. Before they receive permission, tenants are obliged to provide the names of any sub-tenants, their dates of birth and which room(s) they will be occupying.

9.2 In relation to lodgers, different rules apply to tenants who hold a transferred Saxon Weald tenancy to those who hold a tenancy which began after December 2001. The procedure provides additional information but the only rule which is the same in both cases is that the tenant must not allow the property to become statutorily overcrowded.

9.3 Any tenant requesting permission to have a lodger or sub-tenant will be advised of the above implications in writing and must agree that they understand before permission is granted.

9.4 The tenant must also ensure their lodger has the Right to Rent is able to provide proof of their eligibility to UK social housing. The prospective lodger must bring proof of their Right to Rent to Saxon Weald offices.

9.5 A tenant must not sub-let the whole property and it is illegal to do so. If this happens, then the tenancy ceases to be an assured tenancy, and we will follow procedures as for illegal occupiers and seek to repossess the property.

## **10.0 Relationship breakdown**

10.1 Where a relationship within a household has broken down to the extent that one person wishes to move from the property, the company will advise and discuss with those experiencing relationship breakdown about the alternative courses of action available to them. This will include consideration of:

- individual rights and obligations in respect of the current tenancy, including responsibility for payment of rent and any arrears;
- options for transferring the tenancy and the mechanisms by which this might be achieved using housing management procedures;
- options to make an application to the local authority for rehousing.

10.2 The company will provide training to ensure that staff are familiar with the legislation and best practice relevant to relationship breakdown.

10.3 Saxon Weald will work closely with the local statutory and voluntary organisations in responding to cases of relationship breakdown.

## **11.0 Value for money**

- 11.1 Sustaining long term tenancies is the most cost effective way to administer our properties. Ensuring tenants are aware of their responsibilities will reduce time consuming efforts to establish whether a tenancy has been abandoned.
- 11.2 Requiring four weeks' notice when a tenant surrenders their property allows Saxon Weald to:
- pre-inspect the property and plan works to minimise void rent loss; and
  - ensure delays are minimised in allocating a new household to the property.
- 11.3 Costs arising from tenants not following their responsibilities in the tenancy agreement will be pursued through a recharge process.

## 12.0 Monitoring and review

- 12.1 This policy will be reviewed every three years in accordance with our review timetable or in the interim period if any major legislative or regulatory changes require it.

## 13.0 Equality & diversity

- 13.1 Saxon Weald aims to achieve equality of opportunity in relation to the services we provide as a landlord and as an employer. This means that no person or group seeking housing, jobs or contracts with us will be treated less favourably because of their or their partner's, family's, friend's or associated person's protected characteristics. In law, protected characteristics specifically cover: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In addition to these, Saxon Weald will not treat anybody less favourably for any reason which causes a person to be treated with injustice.

Version	Amendment	By	Date
2.0	Equality act added to background section Job title of Lettings manager changed to Move and Improve manager Point 6.2 removed Sections 7 and 9 rewritten	Les Marjoram	Feb-18
3.0	Right to rent information added to 2.0, 7.0 & 9.0	Laura Anderson	Oct 2018