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*helping women through the law*

# Applying For A Transfer Of Tenancy

This guide will explain when it is possible to apply to transfer a tenancy into your sole name.

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Rights of Women produces a number of other legal guides that you may find useful. You can access our full range of legal guides at [www.rightsofwomen.org.uk/get-information](http://www.rightsofwomen.org.uk/get-information)

### What is a tenancy?

A tenancy is an agreement that you can rent a property or part of a property, normally to live in, for a certain length of time.

If you rent the home you live in, you are likely to have a tenancy agreement that sets out the conditions of you living there. It is important to know what type of tenancy you have and whether it is a tenancy or a licence. This is explained further in this guide.

The person who rents the property under the tenancy agreement, is called the tenant. The person or organisation who rents out the property to the tenant is called the landlord.

If there is more than one tenant renting a property together, such as a couple who live together, they are called joint tenants provided both have entered into the tenancy agreement with the landlord.

This guide is about transfers of tenancies between spouses, civil partners or cohabitees. It does not cover eviction by landlords or obtaining housing. If you need housing advice **see Useful contacts** for a list of organisations that may be able to help.

### Do I have a tenancy or a licence?

If you are living in rented property then it is important that you know what type of rental agreement you have.

Sometimes, people who live in shared accommodation such as hostel accommodation or a refuge do not have a tenancy agreement but live there under what is called a licence.

If you live in a property under a licence, your rights in relation to the property are different. You should still have a licence agreement which sets out the conditions of your ability to live at the property.

If you are living somewhere under a licence, you can be asked to leave with reasonable notice which may only be one or two weeks. A tenancy agreement provides better protection. The rest of this guide applies to tenancies only. If you are unsure, **see Useful contacts** at the end of this guide to talk to someone about whether you have a licence or a tenancy agreement.

## What type of tenancy do I have?

These are the most common types of tenancies:

- Tenancies with a private landlord (called assured shorthold tenancies)
- Tenancies with local authorities, housing associations or other registered social landlords (including secure tenancies and assured tenancies)

Your tenancy agreement will say what type of tenancy you have. If you are unsure whether you have a tenancy or what type of tenancy you have then seek help from an organisation such as those listed in **Useful contacts**.

## Who is named as tenants on the tenancy agreement?

The tenancy agreement will state who is the tenant. It could be one person (sole tenant). It could be more than one person (joint tenants).

### We are both named as tenants on the agreement (joint tenants)

If one of you has left or will be leaving the home and the other is to remain then it is sensible to arrange a tenancy in the sole name of the person remaining. This is because whilst the person who has left is a joint tenant they have a right to enter and live in the home (unless there is an occupation order preventing him from doing this – **see our guide Domestic violence injunctions**). There are also

other reasons why you may want to end the joint tenancy, for example you will both be responsible for rent and bills for the property whilst you are both named as tenants on the tenancy agreement, even if one of you has moved out.

If the property is in your ex-partner or spouse's sole name, or in your joint names, it is possible for him to end the tenancy agreement by himself. If there is a disagreement about the tenancy you can ask your ex-partner or spouse to agree not to end the tenancy until the issue has been resolved. You should also write to the landlord to let them know that if your partner or spouse tries to end the tenancy then this is not something that you agree with or something that you want to happen.

If you think your ex-partner or spouse will try to end the tenancy without your consent then you can apply to the court for an injunction to stop them giving notice to end the tenancy. It may be important to act fast and get urgent advice on obtaining the injunction by contacting a solicitor or one of the organisations listed in the **Useful contacts** section.

## I am the sole tenant

If you are married or in a civil partnership then your spouse has a right to live in your home even though it is in your sole name. This right will end when your marriage or civil partnership ends (**See our guide on Marriage: your rights to your home**). If you want to stop your spouse from entering or living in your home before the divorce then you can apply for an occupation order. **See our guide Domestic violence injunctions**.

If you are not married then your partner has no right to live in your home unless your partner obtains an occupation order from the courts. If your partner does not have an occupation order and is refusing to leave or you are concerned about your safety **see our guide on Domestic violence injunctions**.

If you want to leave the home but your partner or spouse wishes to remain then you can agree to the tenancy being transferred to his sole name. However, make sure you seek advice first (**see Useful contacts**) as this may prevent you from getting some types of social housing.

### My ex-partner or spouse is the sole tenant

If you are married then you have a right to live in the property unless there is an occupation order forbidding you from being in the home. You can apply for an occupation order if your spouse is refusing to allow you to enter the home, or if you want to remove your spouse from the home. **See our guide Domestic violence injunctions**.

If you are not married then you have no automatic right to live in the property. You can apply for an occupation order allowing you to live in the home and requiring your partner to leave and not enter the home.

An occupation order will not change the tenancy agreement. If you want the tenancy agreement to be transferred to you then see the remainder of this guide.

If you are worried that your ex-partner or spouse will end the tenancy without your consent then you can apply to the court for an injunction to stop them giving notice to end the tenancy. It may be important to act fast and get urgent advice on obtaining the injunction by contacting a solicitor or one of the organisations listed in the **Useful contacts** section.

## Difference between social housing and renting from private landlords

Social housing means homes rented out by local authorities (the council) or housing associations, which are not for profit. Housing which is not social housing is referred to as the private rented sector or private landlords.

## Tenancy agreements with a private landlord

In general, if you are renting a house or a flat in the private sector it will usually be an assured shorthold tenancy. Assured shorthold tenancies normally last for a set period of time (fixed term) and it is expected that the tenants will leave the property at the end of that time unless the landlord and tenants agree that it will continue. The tenancy will have conditions about what type of notice landlords and tenants need to give to bring the tenancy to an end.

*Transferring the tenancy from joint names to one party's name, or from one party's name to the other party's name*

If you and your partner or spouse agree who will remain in the home and who should have the tenancy then speak to your landlord about arranging a tenancy agreement in the relevant party's sole name. It may be possible to do this before the end of the tenancy depending on the terms of the tenancy agreement.

If the landlord refuses to change the tenancy agreement, or if you and your partner or spouse cannot agree upon who will remain in the home and who should have the tenancy then it is possible to apply for a transfer of tenancy order. However, these are very rare. This is because shorthold tenancies are for such short duration that it is not usually worthwhile making the application.

## Tenancies with a social landlord or local authority landlord

If your landlord is a local authority (council), a housing association or registered social landlord, your tenancy agreement is likely to be a **secure tenancy** or an **assured tenancy**. They are of longer duration and more secure than shorthold tenancies.

If you are thinking of leaving then it is important that you get advice before ending your secure or assured tenancy or telling the landlord that you are leaving as this may prevent you from getting housed by the council or obtaining other social housing.

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Social landlords normally ask for a court order before transferring the tenancy, even if both parties agree. The following sections explain how to obtain a court order.

### What is a transfer of tenancy?

A transfer of tenancy is a type of order the court can make that will change the names of the tenants on the tenancy agreement.

It means that after a couple separates, it is possible for the court to order that the person that remains living in the family home has the tenancy in their sole name. It is important that the person living in the home is named as the sole person on the tenancy. This is because it provides them

with certain rights and prevents their ex-partner from trying to remove them from the property. It also ensures that the person no longer living in the property is not responsible for the rent or other obligations under the tenancy agreement.

Applications for transfer of tenancy can be done under Part VII of the Family Law Act 1996 (which we will refer to as the Family Law Act for the rest of this guide).

### Who can apply?

You can only apply if you were living in the home either as a married couple, civil partners or cohabitants (an unmarried couple). If you were living as a married or civil partnership couple then there are extra rules on when you can apply.

#### *Married or in a civil partnership*

You will need to have started either divorce, dissolution, nullity or judicial separation proceedings before you can apply for a transfer of tenancy under the Family Law Act.

An order to transfer a tenancy from your spouse's name or joint names into your name can be made any time after the court has given the decree nisi as part of divorce, dissolution, or nullity proceedings, or once the court has made a decree of judicial separation. A decree nisi is an order that is made at a particular stage of the divorce, dissolution or nullity process. If you are married, **see A guide to divorce** for information about divorce. If you are in a civil partnership, **see A guide to dissolving civil partnerships**.

#### *Cohabitants*

If you live with your partner and the tenancy is in your joint names, or only in your partner's name, then you can apply to transfer the tenancy to your name under the Family Law Act.

*'...A transfer of tenancy is a type of order the court can make that will change the names of the tenants on the tenancy agreement...'*

## How to apply

If you are applying for a non-molestation order and occupation order at the same time as applying to transfer the tenancy, you can apply for everything in one form, the FL401.

Otherwise, you will need to complete a Form D50B and write a witness statement which supports your application. You can download the form D50B from the government website [www.gov.uk/government/collections/court-and-tribunal-forms](http://www.gov.uk/government/collections/court-and-tribunal-forms). Your statement must include the following information:

- What type of tenancy it is and who the landlord is
- That both you and the other party, or just the other party, is entitled to occupy the property because the tenancy names both of you, or just the other party as the tenant
- The circumstances in which the tenancy was granted to both of you, or to the other party, or how he or both of you became tenants under the tenancy
- That you and the other party lived in the property as spouses (if you are married) or civil partners (if you are in a civil partnership) or cohabitants, and for how long
- Both of your housing needs (for example, you have two children and need a property with at least two bedrooms near their school, the respondent has no dependents and needs one bedroom near his place of work)

- Both of your housing resources (for example, both of your financial resources, ability to rent elsewhere, other properties either of you own or rent)
- The effect that making an order, or not making an order, will have on you, the other party and any children

If you and your ex-partner were not married, but cohabiting, and your ex-partner is the only named tenant on the tenancy then your statements should also include information on:

- The nature of your relationship (in particular, the level of commitment to each other)
- How long you lived together
- Whether you or your ex-partner have any children (either together or from other relationships) or whether either of you have parental responsibility for any children
- The length of time since you and your ex-partner stopped living together
- Your suitability as a tenant, for example, if the rent and bills have always been paid by your partner, how will you afford to pay them
- Your ex-partner's suitability as a tenant

The issues that we have suggested you cover in your witness statement are the issues that the court must consider when deciding whether to make an order to transfer the tenancy.

Once you have completed the form and the witness statement you should take them to court to issue them, or send them to the court by post.

A court fee is payable. You may be able to claim an exemption from having to pay this fee if you are on benefits or your income is low by completing a form EX160.

The court will process the application and contact you with a date for the hearing of the application. The court will also send a copy of your application form and statement to your ex-partner (who will be called the respondent) and the landlord for the property. Sometimes the court may ask you to send the documents to the respondent and landlord and if so you will be provided with further information by the court.

## Transferring tenancies for the benefit of children

If you and the other party have children under the age of 18 then it may be possible to apply to transfer a tenancy into your name for the benefit of the children. The law relating to these applications are in the section 15 and schedule 1 of the Children Act 1989. These applications are rare but may be relevant if, for example, you are married but not divorcing. If you want further advice on these applications then contact a solicitor or legal advice and support organisation (**see Useful contacts**).



The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

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For confidential legal advice on family law:

Women living and working in London: call **020 7608 1137** the advice line is open **Mon 11am–1pm, and Tues 2–4pm, Wed and Thurs 10am–12noon and 2pm–4pm.**

For all women: call **020 7251 6577** the advice line is open **Tues-Thurs 7–9pm and Fri 12–2pm.**

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence law visit **[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)** for our advice line details.

## Useful contacts

### Emergency Contacts

#### Police (emergency)

999

#### 24 hour domestic violence helpline

0808 200 0247

[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)

### Find a Lawyer

#### The Law Society

0207 320 5650

[www.lawsociety.org.uk/find-a-solicitor](http://www.lawsociety.org.uk/find-a-solicitor)

#### Resolution

01689 820272

[www.resolution.org.uk](http://www.resolution.org.uk)

#### Ministry of Justice

020 3334 3555

[www.find-legal-advice.justice.gov.uk](http://www.find-legal-advice.justice.gov.uk)

#### Public Access Portal

[www.directaccessportal.co.uk](http://www.directaccessportal.co.uk)

### Legal advice and support

#### Citizens Advice

[www.citizensadvice.org.uk/index/getadvice.htm](http://www.citizensadvice.org.uk/index/getadvice.htm)

#### Law Centres Network

020 7749 9120

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

#### LawWorks Clinic Network

[www.lawworks.org.uk](http://www.lawworks.org.uk)

#### Shelter

0808 800 4444

[www.shelter.org.uk](http://www.shelter.org.uk)

#### Advocate (previously the Bar Pro Bono Unit)

[www.weareadvocate.org.uk](http://www.weareadvocate.org.uk)

#### Personal Support Unit

020 7947 7701

[www.thepsu.org](http://www.thepsu.org)

#### Disability Law Service

020 7791 9800

[www.dls.org.uk](http://www.dls.org.uk)

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