

Succession Policy

2020 – 2023

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1	July 2020	Head of Neighbourhoods	New Policy – Separated out from Tenancy Management Policy. Written in consultation with Anthony Collins Solicitors.

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1. Purpose and scope

- 1.1 Succession occurs when a tenant dies, and an eligible person has a right either by law or given in the tenancy agreement to take over the tenancy.
- 1.2 This Policy provides guidance on what happens to the tenancy when a tenant dies.
- 1.3 We recognise that following the death of a tenant, their family members will be grieving and that any requests for succession of the tenancy need to be handled with sensitivity and care.
- 1.4 Our tenants will have different succession rights depending on the type of tenancy agreement they hold.
 - 1.4.1 This Policy applies to all assured and assured shorthold tenants, including starter tenants.
 - 1.4.2 This Policy does not apply to licensees (because they do not have any rights of succession).
 - 1.4.3 This Policy does not apply to leaseholders.
- 1.5 We aim to provide a fair and efficient service when processing succession requests by:
 - dealing sensitively with residents at a time of grief and loss;
 - meeting our statutory and contractual obligations; and
 - making the best and most efficient use of our available housing stock.
- 1.6 As with all policies and procedures, we shall ensure compliance with our Equality and Diversity Policy in operating this Policy.

2. Risks

- 2.1 This Policy aims to:
 - ensure that succession rights are determined correctly in accordance with legislation and rights under the deceased tenant's tenancy agreement; and
 - set out the policy objectives for granting any discretionary succession.

3. Legal and regulatory framework

- 3.1 The key relevant legislation is:
 - Housing Act 1988 (the “1988 Act”); and
 - Localism Act 2011 – which altered the process for contractual succession rights for family members of assured tenants if their tenancies started on or after 1st April 2012. The Localism Act also amended section 17 of the 1988

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Act to extend the statutory right of succession of assured tenants to tenants with a fixed term assured shorthold tenancy of 2 years or more.

The 1988 Act was amended by:

- The Civil Partnerships Act 2004 to extend statutory succession rights to same sex couples; and
- The Marriage (Same Sex Couples) Act 2013 which states all references to marriage in legislation shall be read as including a reference to marriage of a same sex couple.

3.2 The relevant regulatory position is found in the Regulator of Social Housing's:

3.2.1 Tenancy Standard (April 2012) which expects registered providers to set out their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members; and

3.2.2 Governance and Financial Viability Standard (April 2015) which requires:

“Governance arrangements shall ensure registered providers:

(a) adhere to all relevant law ...”

4. Types of succession

4.1 There are a number of ways a tenancy can pass on death. Practical examples are also set out at **Appendix 1**.

4.2 Surviving Joint Tenant

4.2.1 If the tenancy agreement is in joint names and one of the joint tenants dies, the tenancy will continue with the surviving joint tenant as a sole tenant. This is called the “right of survivorship” and happens automatically on the date of death.

4.3 Statutory Succession

4.3.1 If an assured tenancy agreement is in the name of a sole tenant and they die, then his or her spouse/civil partner (or person who has been living together with a tenant as their spouse/civil partner) succeeds to the tenancy. This is as long as immediately before the tenant's death the spouse/civil partner/partner was occupying the property as their only or principal home.

4.3.2 The successor will take over the existing tenancy: no new tenancy shall be issued.

4.4 Contractual Succession

4.4.1 A contractual succession is where additional succession rights have been included in the tenancy agreement. If there are any, these are usually only

granted to a family member (other than a spouse, civil partner or partner) who lived with the tenant in the property as their only or main home for 12 months prior to the tenant's death.

4.4.2 For the purposes of succession, family members are usually defined as: spouse, civil partner, parent, grandparent, children, grandchildren, siblings, uncle, aunt, nephew and niece, including step relations, half relations and illegitimate children, as well as persons living together as husband and wife or civil partners.

4.4.3 Not all of our tenancy agreements include a contractual right of succession. We will therefore read the individual tenancy agreement carefully to check if contractual succession rights exist, what the criteria are and any time restrictions on an application to succeed.

4.4.4 Where the applicant qualifies to a contractual right of succession:

- (a) If the original tenancy was granted prior to 1st April 2012, a new tenancy agreement will be granted to the successful applicant; or
- (b) If the original tenancy was granted on or after 1st April 2012, the tenancy will vest in the successor. No new tenancy shall be issued.

4.5 Discretionary Succession

4.5.1 A discretionary succession is where the person requesting to succeed to the tenancy was left in the property on the death of the tenant but has no statutory or contractual right to succeed. They are asking us to exercise our discretion to let them stay as a tenant: we are under no obligation to exercise that discretion.

4.5.2 The criteria we will take into account when considering whether or not to grant a discretionary succession are listed at Section **Error! Reference source not found.** below.

4.6 Inheriting an Assured Tenancy

4.6.1 In addition to the above rights, it is possible for an assured tenancy to pass under a tenant's Will or, if they die without leaving a Will, through intestacy rules. This is because a tenancy is an interest in land. If the beneficiary (i.e. the person to whom the tenancy passes under the Will) lived in the property as their only or main home at the time of death, they will inherit an assured tenancy. Ground 7 of Schedule 2 of the 1988 Act exists for these circumstances. See Section **Error! Reference source not found.** below.

5. Previous successions

- 5.1 There can only be one statutory or contractual succession. So, if there has been a previous succession (either statutory or contractual) there will be no further right of succession.
- 5.2 However, successions before our stock transfer date (15th July 2002), when the Council was still landlord, do not count.

6. ID and proof of residency

- 6.1 We will require proof for all succession cases to confirm the identity of the person who is claiming succession, their relationship to the deceased, the length of residence with the tenant and, where a discretionary succession, evidence of their right to rent.
- 6.2 The onus is on the potential successor to provide a sufficient level of evidence. Documents should cover the entire qualifying period. They must also provide the death certificate.
- 6.3 We may also conduct any other checks it considers necessary to ascertain who was residing in the property in the qualifying period prior to the tenant's death.

7. Under occupation

- 7.1 Where there has been a statutory or contractual succession or the right of survivorship has taken effect and the successor is under occupying, we will still discuss rehousing to a more suitably sized property with the successor.
- 7.2 We will generally not allow a discretionary succession, where this would lead to under occupation as determined by our Allocations Policy or relevant lettings policy for the property.

8. Inheriting an assured tenancy

- 8.1 If someone claims to have inherited a tenancy or we realise that an inheritance situation arises, we should ask them for a copy of the Will and Grant of Probate.
- 8.2 Ground 7 exists specifically for this situation. A copy of the Ground is set out in **Appendix 2**.
- 8.3 Possession proceedings based on Ground 7 must be issued within 12 months of the date of death or our knowledge of the date of death or it cannot be used (unless the Court grants permission). A Ground 7 NSP has a 2-month notice period. This means the Ground 7 NSP must therefore be served before 10 months after the date of death.
- 8.4 It is not correct to use an NTQ when the tenancy has been inherited under either a Will or Intestacy. An NTQ will be of no effect (unless the person who has inherited the tenancy then abandons the property).

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8.5 If Ground 7 is going to be used, the rent and tenancy terms should not be changed as this would prevent the use of Ground 7.

8.6 Refer to our Death of a Tenant Policy for further guidance.

9. Discretionary granting of tenancy

9.1 If no-one has a statutory or contractual right to succeed the tenancy agreement, we may at our discretion grant a new tenancy agreement to an applicant.

9.2 In deciding whether to exercise this discretionary grant of tenancy, the Housing Officer will consider the follow factors:

9.2.1 Any previous successions to the tenancy;

9.2.2 That the would-be successor is a family member of the deceased tenant as defined in Section 4.4.2 above or the appointed guardian for the deceased tenant's children;

9.2.3 The would-be successor has lived in the property as their only or main home in the 12 months prior to their death as their only home;

9.2.4 That all adult household members have the right to rent;

9.2.5 The property is not too large or too small for the remaining occupants in accordance with our Allocation Policy or the relevant lettings policy at the time of the request;

9.2.6 The rent payable is affordable to the would-be successor (either because they can directly afford the rent, or they would be entitled to sufficient Housing Benefit or Universal Credit). Payment of any use and occupation/mesne profit charges that has been set up in the meantime may be an indicator of affordability;

9.2.7 Throughout the tenancy, the property has been kept in a clean and well-maintained condition and there were no complaints of anti-social behaviour or other breaches of tenancy against the tenant or any member of their household;

9.2.8 The applicant agrees to pay any arrears that have accrued since the tenant's death; and

9.2.9 That the applicant has the right to live in another property (for example, they own another property) which is either vacant or could be vacant by the applicant taking actions (for example, seeking possession of a tenanted property).

- 9.3 The following issues will also be taken into account:
- 9.3.1 the property type e.g. adapted, sheltered accommodation;
 - 9.3.2 over-crowding or under-occupation;
 - 9.3.3 medical needs and vulnerabilities of the applicant and the intended household members; and
 - 9.3.4 the demand from other applicants for this type of property.
- 9.4 Where we would agree to a discretionary grant of a new tenancy except for the fact that the property is too large for the current occupier(s), we will make one offer only of suitable alternative (smaller) accommodation, not of the same property, subject to availability of suitable stock.
- 9.5 Any grant of a new tenancy under this discretionary option will be subject to any restrictions on us through our obligations under any relevant allocations agreements.
- 9.6 For discretionary offers of tenancy, we will offer the form of tenancy required by our Tenancy Policy at the time for new tenants. At the date of this Policy that would be a starter tenancy.
- 9.7 It is important to note that someone who is granted a tenancy under this option, will not be treated as a ‘successor’ as defined under section 17 of the Housing Act 1985. This means their spouse, civil partner or partner living together with them as if their spouse in the future would have a statutory right of succession.

10. Succession to a minor

- 10.1 A minor is a person aged under 18 years. If they meet the conditions for succession, they are legally entitled to succeed to a tenancy regardless of how young they are. We will always seek to find an adult to be the trustee to hold the tenancy interest until the minor reaches 18 years of age. If the deceased tenant had a will, then the executor will be the trustee automatically. If there was no will, we will speak to other adult family members or a social worker to ask one of them to act as the trustee.
- 10.2 Where there is social services involvement, we will work with both the family and social services to try to ensure sufficient support is provided by the family. If no adult will agree to act as trustee, we will take legal advice about how to proceed.

11. Multiple successors

- 11.1 Where more than one person claims to be eligible to succeed, we will require them to resolve between themselves who will succeed the tenancy. If they are unable to:
- 11.1.1 For assured tenants whose tenancy was granted prior to 1st April 2012, it depends on the provisions of the tenancy agreement as these determine who decides. It will usually be us who decides if the applicants cannot agree between them.

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11.1.2 For assured tenants whose tenancy was granted on or after 1st April 2012, they must apply to Court if they cannot agree.

11.2 We will not create a joint tenancy on succession.

12. No right to succeed

12.1 Once we have decided that a remaining occupant has no right to succeed to the tenancy, we will follow our Death of a Tenant Policy.

13. Relevant documents

- Succession Procedure
- Allocations Policy
- Death of a Tenant Policy
- Tenancy Policy
- Appendix 1 – Succession Examples
- Appendix 2 - Ground 7 Schedule 2 Housing Act 1988

14. Responsibilities

14.1 The Head of Neighbourhoods is responsible for ensuring effective monitoring and review of this Policy

15. Complaints

15.1 If a person claiming succession is dissatisfied with the operation of this Policy, they may use our complaints procedure. However, we will not generally delay taking possession proceedings even if a complaint is being pursued.

15.2 Whether or not someone is entitled to succeed to a tenancy is a question of fact, ultimately for the Court.

16. Review

16.1 The next planned review of this Policy will be July 2023. However, it will be reviewed sooner if there is any change in the relevant legal and regulatory framework.

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Appendix 1 – Succession examples

Surviving Joint Tenancy

Mr Rogers and Mr Tucker have a joint assured tenancy. Mr Rogers dies. The tenancy continues as Mr Tucker's sole tenancy. It makes no difference if Mr Tucker is under-occupying or in arrears. No new tenancy agreement is needed. We change the name on Orchard.

Statutory Succession

Mr Smith has a sole assured tenancy in an over 55 sheltered scheme and lives with his wife Mrs Smith aged 53. Mr Smith dies. Mrs Smith is a statutory successor. The fact she is 53 makes no difference to her statutory right. No new tenancy agreement is needed. We change the name on Orchard and note Mrs Smith is a successor.

Contractual Succession

Mrs Singh has an assured transferring tenants tenancy agreement. Her son lives with her. Mrs Singh dies. Her son has a contractual family member succession right in the tenancy agreement if he can prove he lived with her for the 12 months before her death as his only or principal home.

- If he only moved in 6 months before her death, he is not eligible to succeed.
- If he had his own tenancy and stayed over at his mother's home 2 nights a week, it is not his only or principal home and he is not eligible to succeed.
- If he moved out a month before Mrs Singh's death when she went into hospital, he is probably not eligible. Evidence will be needed about which was his only or principal home was in that month.

Discretionary Succession

Mr Green had been a joint assured tenant with his former wife. She died. Later, Miss Brown moved in and they lived together but were not married. When Mr Green dies, Miss Brown cannot succeed because the succession right has already been used up as the previous 'right of survivorship' counts as a succession. However as she has a disabled child, We may use its discretion to offer her a new sole tenancy, if it decides it is appropriate to do so taking into account Section **Error! Reference source not found.** of our Succession Policy. It has no obligation to do so.

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Inheriting an Assured Tenancy

Mrs Locks originally had a joint assured tenancy with us, with her husband Mr Locks. He died 5 years ago. Her only daughter Jane has lived with her for the last 3 years. Mrs Locks dies. There can be no succession as the one succession right was used up when Mr Locks died (and the right of survivorship took effect).

However, Mrs Locks left a Will and Jane is her executor and beneficiary. As Jane occupies the house as her only or principal home, she inherits an assured tenancy. We might choose to do nothing if she is not under-occupying or they may choose to use Ground 7. We must not change or increase the rent or the terms of the tenancy if it wants to recover possession of the property.

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Mrs Locks originally had a joint assured tenancy with us, with her husband Mr Locks. He died 5 years ago. Her only daughter Jane has lived with her for the last 3 years. Mrs Locks dies. There can be no succession as the one succession right was used up when Mr Locks died (and the right of survivorship took effect).

Jane has applied for Letters of Administration and she is the beneficiary under the intestacy rules (i.e. the rules that apply when a deceased person has not left a Will). Jane is her administrator and beneficiary. As Jane occupies the house as her only or principal home, she inherits an assured tenancy.

We might choose to do nothing if she is not under-occupying or they may choose to use Ground 7. We must not change or increase the rent or the terms of the tenancy if it wants to recover possession of the property.

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Appendix 2 – Ground 7 schedule 2 Housing Act 1988

The tenancy is a periodic tenancy (including a statutory periodic tenancy), or a fixed term tenancy of a dwelling-house in England, which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the Court, the landlord or, in the case of joint landlords, any one of them became aware of the former tenant's death.

For the purposes of this ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period or length of term of the tenancy, the premises which are let or any other term of the tenancy.

This ground does not apply to a fixed term tenancy that is a lease of a dwelling-house -

- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
- (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.