

# Succession and Assignment Policy

## 1.0 INTRODUCTION

**1.1** This Policy sets out the circumstances under which a spouse/partner or family member may remain in one of our homes following the death of a resident. We recognise that a home is not just for the resident but to members of their family as well. We will deal with succession enquiries and applications sensitively following any residents death.

**1.2** This policy should be read in conjunction with:

- Allocations and Lettings Policy
- Tenancy Policy
- Mutual Exchange Policy
- Safeguarding Policy
- Transfer Policy
- Income Recover Policy

## 2.0 SCOPE

**2.1** This policy applies to assured and secure tenants. It does not apply to London Living Rent, assured shorthold tenancies, licensees, shared owners, leaseholders or freeholders.

**2.2** This policy does not cover the assignment of a joint tenancy to a sole tenancy or adding someone to a tenancy.

## 3.0 KEY TERMS AND DEFINITIONS

**3.1 Succession** refers to the transfer of a tenancy to someone else following the death of a tenant. Succession rights depend on several factors including the type of tenancy, date of issue, the terms of the tenancy agreement, and the relationship of the successor to the deceased tenant.

**3.2 Statutory succession** is a right outlined in legislation. It gives certain people (statutory successors) the legal right to inherit a tenancy on the death of a tenant. In this event, the tenancy does not end following the death of a tenant and continues in the name of the successor.

**3.3 Contractual succession** is where the tenancy agreement provides qualifying family members succession rights. In this event, the tenancy ends and a starter tenancy is granted in the name of the successor.

**3.4 An assignment** is where a resident can legally pass their tenancy to someone else during their lifetime via a Deed of Assignment. The person who transfers the tenancy is the 'assignor' and the person to whom the tenancy is transferred is the 'assignee'. The assignee becomes the tenant of the landlord, under the same agreement. The ability to assign is limited by the terms of the tenancy and by legislation.

**3.5 Survivorship** is when the remaining joint tenant becomes a sole tenant on the death of a joint tenant. Survivorship is treated as a statutory succession.

**3.6 Family member** is defined by the Housing Act 1985 (Section 113) as: a spouse or civil partner, a parent, grand-parent, child, grand-child, brother, sister, uncle, aunt, nephew or niece. This includes family relationships through marriage or civil partnership, relationships by half-blood, and stepchildren.

## **4.0 SUCCESSION**

**4.1** This section applies to residents who have the right to succession as set out in legislation or additional rights in their tenancy agreement.

**4.2** The right to a succession is unchanged after a mutual exchange – any successor remains a successor in their new home with no new right of succession.

### **Requesting succession**

**4.3** We recognise that claims for succession are made at a time of bereavement and are committed to dealing with cases sensitively. We will make reasonable enquiries and assess applications made, however, the person claiming the right to succeed must provide the necessary evidence to establish their right.

**4.4** Applications for succession should be made within one month of notifying us about the death of the tenant. We will work closely with the potential successor in cases where we need to extend these timeframes.

**4.5** We will not process successions unless we are in receipt of the death certificate.

**4.6** To claim succession falsely or dishonestly, or to provide false or misleading information to support a claim, is fraud. Covering up the death of a tenant to benefit from their tenancy is also fraud. We will take appropriate enforcement action where we believe a fraudulent claim has been made in line with relevant legislation. We may also engage with third parties such as the Police and local authorities.

**4.7** A potential successor (and any other household members) must be in occupation of the tenancy address as their only or principal home at the time of death of the tenant and for at least a period of 12 months before death.

**4.8** Where there is more than one potential successor, we will ask them to decide on who will succeed the tenancy. Where a decision is not made, depending on the tenancy type, this will be decided by a court or by us. Where we are making the decision, we will consider housing need, dependents, and relationship with the deceased tenant.

### **Granting a succession**

**4.9** In the case of a joint tenancy, the tenancy is automatically succeeded by the remaining joint tenant by what is known as 'survivorship'. Survivorship is treated as one succession which means that there is no further right of succession.

**4.10** There is one statutory right of succession for a secure or assured tenancy. In addition to the statutory succession rights set out in legislation, some of our tenancy agreements include additional contractual succession rights. We may also consider granting a new 'discretionary tenancy' where there is neither a statutory nor contractual right to succession.

**4.11** A child under the age of 18 may succeed to a tenancy where they meet the relevant criteria. However, the tenancy will need to be held on trust by a guarantor until the child reaches 18 years of age. The guarantor can be a private individual, Local Authority or Social Services. We will grant an 'Agreement for Tenancy' and the full transfer of tenancy will be completed shortly after the minor's 18th birthday.

**4.12** If the property is not suitable for the successor, we will, where the law allows us to, require the successor to move to an alternative property. We will consider a home unsuitable if the property is:

- Larger than the successor's housing need (i.e., under-occupying) or would lead to overcrowding.
- Adapted and the successor has no need for the adaptations.
- A supported or older person's home and the successor has no need for this type of housing.
- Deemed unsuitable for any other consideration that reasonably applies.

**4.13** If a resident loses their security of tenure before they die or wish to assign, for example by abandoning the property or subletting the whole property, there will be no right to succession or assignment. If a resident is admitted to a care home for more than 28 days, we ask that they, or someone assisting them, notify us so we are aware of the situation.

**4.14** Where no statutory or contractual rights to succession exist for a member of the household occupying the home of a deceased tenant, we may consider offering a new tenancy where there is a housing need, and any significant housing related health or welfare needs.

**4.15** Where occupiers have no right to remain in the property, we will provide advice on finding alternative accommodation and where necessary, take legal action to take possession of the property.

**4.16** We do not give succession rights to properties not let as a home or for sub-units (parking bays, stores and garages etc).

### **Proof of Relationship and Residency**

**4.17** We will require evidence for **all** succession requests to confirm the identity of the person claiming succession.

We require evidence to establish:

- Their relationship to the deceased resident (i.e. marriage / civil partnership certificate);
- That the successor has resided at the home for at least 12 months as their only or principal home (where this is unclear the Ops Manager will consider whether to approve the succession application or obtain further evidence of residency; and
- That the successor has valid evidence of their 'right to rent' in the UK. This can be shown with a UK or Irish passport or by providing a valid Right to rent code.

### **Arrears and debt following the death of a resident**

**4.18** A joint surviving resident will remain liable for any rent arrears or other debts owed jointly under the tenancy at the time of the death of the other joint resident.

**4.19** Any rent arrears or debts owed by a sole resident would form part of their estate although the successor may be willing to settle these on taking over the tenancy.

**4.20** The Income Recovery Policy should be referred to for further information.

### **Discretionary tenancies**

**4.21** Any discretionary offer to grant a new tenancy will be in line with our Allocations and Lettings Policy.

**4.22** Where there is no statutory or contractual right to succession or assignment of a tenancy but, remaining household family members wish to be granted a tenancy, we may consider the award of a discretionary tenancy under certain circumstances.

These will be:

- Where the tenant has died, and there is no right to succession, or;
- Where the tenant has gone into residential care on a permanent basis, and there is no option or right to assign, or;
- In rare cases, where we may consider other special circumstances, for example but not necessarily limited to:
  - Where domestic abuse is a factor in a case where a perpetrating tenant has ended the tenancy and/or vacated the property with no intention to return, and there are no assignment rights for the victim and any remaining household members.
  - Where a vulnerable minor remains in the property following the death of the tenant, and there is no right to succession (subject to the conditions described in 4.11).
  - Where a case poses a risk (i.e., legal, regulatory or reputational) to the organisation, or other relevant sensitivities, vulnerabilities and grounds that should be reasonably considered.

**4.23** In the case of a discretionary tenancy, a family member is defined as: Spouse; Civil partner; Unmarried partner; Sibling; Parent; Grandparent; Child and adopted child; Grandchild; Uncle or aunt; Niece or nephew; Step relation; Half relation.

**4.24** In some cases, we may consider granting a discretionary tenancy to a carer if they meet the following criteria:

- They are the main carer and are a permanent resident in the household
- They are in receipt of Carer's Allowance for the resident they are looking after or have an underlying entitlement to Carer's Allowance
- The resident, they are looking after is in receipt of the middle or higher rate Care component of DLA, or either rate of daily living component of PIP

**4.25** Except for the circumstances outlined, we do not consider awarding discretionary tenancies to household members remaining in a property after a tenant has voluntarily left the property. In such circumstances, we provide housing options advice, make the appropriate referrals for further support (i.e., to our Local Authority partners) and take action to obtain possession of the property.

**4.26** If both cases, the circumstances and the relationship to the tenant are assessed as eligible under these definitions, we require the following conditions to be satisfied in order to further consider a discretionary tenancy:

- The applicant must have a legal right to hold a tenancy and have recourse to public funds.
- The applicant (and any other household members) must have lived with the tenant for the previous 12 months, as a minimum.
- The applicant must not have a legal interest in another property which could be available for their occupation.
- The tenancy must have been conducted satisfactorily, and there is no risk of harmful impact on the home, neighbourhood, or community by awarding the applicant a discretionary tenancy.
- The applicant does not have the financial capacity to rent or purchase another property (i.e., private sector rent or homeownership).
- The granting of a discretionary tenancy does not conflict with our charitable objectives or legal, regulatory, or moral obligations as a responsible and caring social landlord.

**4.27** In cases where the remaining family/household members would be under-occupying the property, or if the property is adapted and the adaptations are no longer required, we will expect the applicant/household to move to suitable, alternative accommodation. In such cases where this is relevant, this will be a condition of the discretionary tenancy being awarded. The applicant will be given two property offers, and if both are refused then action will be taken to end the tenancy.

**4.28** We cannot start possession proceedings until at least 6 months after the resident became entitled to the tenancy by succession. The successor has at least 6 months before enforcement action is taken, and we have 12 months to act once we know about the succession. During this time we must work with the successor to find a smaller suitable home.

**4.29** If it is determined that a discretionary tenancy will not be granted, the applicant will have the right of appeal. The applicant will have 7 calendar days to appeal in writing, and the appeal will be heard by a Director.

**4.30** Where the right of appeal is exercised and our original decision is upheld, this will be our final decision and no further right of appeal will be granted.

## **5.0 ASSIGNMENT**

**5.1** This section applies to tenants who have an assured or secure tenancy.

**5.2** Assured shorthold tenants, including those within the starter period, do not have the right to assign.

## **Requests for assignment**

**5.3** An assignment can only take place if the original tenant has the right to assign.

We will consider the following types of assignment:

- By mutual exchange: Residents who have the right to mutually exchange can 'swap' their home with another tenant of a registered provider of social housing, such as another housing association or local authority. A mutual exchange cannot be carried out with a tenant of a private landlord. For further information, see our Mutual Exchange Policy.
- By a court order: We will always agree to an assignment if ordered to do so by a court order.
- To a potential successor: Secure residents have the right to assign their tenancy to someone who would be an eligible successor. Other residents may have the right to assign to a potential successor if stated in their tenancy agreement.

**5.4** An assignment does not count as a succession where it is required by a court order or occurs through a mutual exchange.

**5.5** We may refuse a request of assignment where the:

- Resident has rent arrears or any other outstanding breach of their tenancy
- Resident is subject to legal action by us
- Property would not be suitable for the needs of the person the tenancy would be assigned to (assignee) or their household. This includes some older persons housing schemes and supported housing or where the property has been adapted and the assignee or any member of their household does not require the adaptation.
- The tenancy has already been assigned or succeeded where the request is not via a court order or mutual exchange.

**5.6** Where there are outstanding arrears, we will agree with the resident that they must clear these before proceeding with their application to assign their tenancy unless there are exceptional reasons, or it is in our interest to do so.

## **6.0 RIGHT TO BUY/RIGHT TO ACQUIRE**

**6.1** Where the deceased person had the preserved Right to Buy or Right to Acquire, a Statutory Successor may also "inherit" this preserved right. The original Tenancy Agreement should be checked in all cases to confirm the situation. The successor can count their own period of occupation before they succeeded to the tenancy for the purposes of calculating the minimum period for the exercise of the right, and the discount

## **7.0 FAIR AND EQUAL TREATMENT**

**7.1** We will treat all applications for succession sensitively and fairly in line with this policy and legislation. We will promote inclusion, challenge discrimination and seek to make reasonable adjustments to ensure that everyone can access our services and that no one is excluded inappropriately from any services or activities provided by us.

**7.2** An Equality Impact Assessment (EIA) and Data Protection and Impact Assessment (DPIA) has been completed for this policy.

## **8.0 CONFIDENTIALITY & DATA PROTECTION**

**8.1** For the purposes of this policy and how we manage the information that we hold on individuals as part of our management processes, we will comply with our obligations as set out under our Group Data Protection Policy.

## **9.0 LEGISLATION AND REGULATION**

**9.1** Key legislative and regulatory requirements affecting this policy:

- Housing Act 1985 and 1988 (as amended)
- Housing Act 1996
- Rent Act 1977
- Localism Act 2011
- Matrimonial Causes Act 1973
- Family Law Act 1996
- Equality Act 2010
- Human Rights Act 1998
- Immigration Act 2014 (Right to Rent)
- Data Protection (UK GDPR & Data Protection Act 2018)
- Civil Partnerships Act 2004 – amended the above Housing Acts to extend statutory succession rights to same sex couple.
- Marriage (Same Sex Couples) Act 2013
- Housing & Planning Act 2016
- Regulator of Social Housing Consumer Standards Tenancy Standard (2024)

## **10.0 RESPONSIBILITIES**

**10.1** The Neighbourhood Manager and Housing Services Manager have overall responsibility for the delivery of, and compliance with this policy.



<b>Version History</b>	
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<b>Version Code</b>	V1.0
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