

# Succession Policy

## 1. Introduction

When a tenant dies a succession to the tenancy may be possible if a relative or partner was living with him/her at the time of death. This depends on the type of tenancy held. By partner we mean a husband, wife or someone who lives with the tenant, as their partner at the time of their death.

A tenancy has a right of succession whether the deceased tenant had an assured (fully) or assured (protected) tenancy.

Some previous Sevenoaks District Council Assured (Protected) Tenants have additional rights to succession for family members living in the property 12 months before death, under the tenancy following transfer to West Kent. The statutory right of succession for Assured Tenants is granted under the Housing Act 1988.

## 2. Aim and objectives

West Kent will ensure that succession rights are granted according to legal requirements, and in line with this policy statement and accompanying procedures. We will:

- Respond promptly to all applications received to succeed and make application forms, advice and assistance available.
- Ensure that succession and non-succession is carried out sympathetically, sensitively, efficiently and in accordance with the law.
- Ensure that former tenants of SDC who may have an additional right to succeed are made aware of this right.

## 3. Definitions

For the purpose of this policy the following definitions apply:

**Succession** is when a relative or partner takes over the tenancy after death of the tenant. Succession does not involve the creation of a new tenancy.

**Assured Protected Tenants** - those who were former tenants of Sevenoaks District Council and have held a continuous tenancy with West Kent since the transfer on 23 March 1989 (unless they have assigned tenancy by mutual exchange with someone with full assured tenancy).

**Non-successor** – someone remaining in the property, who does not qualify to succeed to the tenancy.

## 4. Succession rights

### 4.1 Succession Rights of Assured (Protected) Tenants

1. If the tenancy was held by a couple as joint tenants and one tenant dies then this is a succession.

2. If it was a sole tenancy when the sole tenant dies, the partner automatically succeeds to the tenancy by virtue of section 17 of the Housing Act 1988

3. If the tenant was a sole tenant, then a member of the tenant's family can succeed. However the succession can only take place if:

- The person lived with the tenant for 12 months prior to death
- S/he is entitled to the Tenancy under the Will/intestacy
- Notice of the claim is served within one month of the death
- S/he obtains probate and seeks the transfer within 6 months of the death and
- Did not gain the tenancy by succession.

The following family members can claim succession: the tenant's partner, parent, grandparent, child, stepchild, grandchild, brother, sister, uncle, aunt, nephew or niece (whether the relationship is by blood or by marriage).

There is only one right of succession.

The Right to Buy goes with the succession. As a new tenancy agreement will not be entered into on a succession (merely the name changing), the rights of the original tenant follow the tenancy.

Calculation of any discount entitlement depends on the length of occupancy of the person claiming. A child who succeeds to the tenancy can claim any period during which he occupied the house over the age of 16, whilst his parent was the tenant.

#### **4.2 Succession Rights of Assured (Fully) Tenants**

On the death of a sole tenant who is not a successor, the tenancy will pass to the tenant's partner under the provisions of the Housing Act 1988 and the tenancy agreement, provided that he or she occupies the premises as his or her own or principle home at the time of the tenants death. (See clause 4 of tenancy agreement)

#### **4.3 Probationary and Assured Shorthold Tenants**

These tenants do have the right to succeed under their tenancy agreements.

#### **4.4 Succession & Tenancy Responsibilities**

To prove a person was living in a property and meets that qualification, they will be asked to provide evidence. This may be bank account or benefit proof at that address. If the deceased tenant was claiming housing benefit, we will check that the council are aware if the person claiming succession was living there. If they were not further investigations may take place to see if someone was fraudulently claiming succession, or housing benefit (which would lead to a hb clawback and arrears for successor to pay).

If someone is a successor they will take on the same tenancy agreement as the tenant who has died. This means they will become responsible for all areas of the tenancy, including rent account, arrears and condition of the property.

### **5. Key points of policy**

- The Housing and Communities Team will be responsible for the day to day implementation of the policy.

- A succession approval form is to be completed by a Neighbourhood Housing Officer (NHO) and approved by their manager
- Succession is immediate and automatic when a tenant dies, and it will happen whether or not West Kent agrees as long if the potential successor meets the statutory requirements
- Where there is no obvious successor, Notice to Quit will be served on the property and /or the Public Trustee if the tenant dies intestate. Any non- successor or occupiers in the property should be sent a letter as a notice to vacate. (See also terminating the tenancy procedure where there is no successor.)
- If someone is a non-successor, West Kent will advise them of their rights to apply to the local housing register, where usually non-successors get reasonably high priority. The non-successor will be charged a weekly use and occupation charges until they leave. They will have to pay the weekly charge and take responsibility for clearing any damage or belongings belonging to them. Not paying or causing damage or not clearing the property could become grounds for excluding the non-successor from being housed in other West Kent properties.
- NHOs should visit tenants who have succeeded to a tenancy within 4 – 5 weeks of the succession approval, to check there are no issues or see if any advice is needed.
- Succession to children (minors) is now possible. It has been accepted that a child can have a tenancy held on trust for them by an adult until they are 18. A suitable adult will hold a legal tenancy and the child an 'equitable tenancy'.

## 6. Equality and diversity

We will take into account every successor and non-successor's needs when applying for succession. Each case will be considered individually and appropriate tailored advice and assistance provided to help meet any housing need. This includes assisting those under 18, those with disabilities, special needs and elderly on their rights to apply for succession or other housing assistance, if they are not aware. This may include referral to other agencies including social services and floating support where needed.

Any decision on whether or not to rehouse someone who is not entitled to succeed under statute will be reported to the Tenancy Panel.

## 7. Monitoring

At key stages in the process the Neighbourhood Housing Manager will check to ensure that procedures are being complied with and will sign off the assignment by checking the details of the assignment and authorising succession.

## 8. Review

The Right to Succeed policy will be reviewed every three years by West Kent. The policy will also be reviewed in accordance with any future legislative changes as and when they occur.

The next review is due in 2018.