



Places to live. Space to grow.

Succession Policy

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1 Introduction: the purpose of this policy

- 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. A successor is a person who is the tenant after a succession. They take over the rights and responsibilities of the tenancy.
- 1.2 This policy sets out the conditions under which someone may succeed to a tenancy after a tenant's death.
- 1.3 We recognise that following the death of a tenant, their family members will be upset and grieving and that any requests for succession need to be handled with sensitivity and care.
- 1.4 Our approach to succession is defined by statute and the tenancy agreement. Succession is dependent on:
 - The law
 - The relationship to the deceased tenant
 - How long the applicant has lived in the home
 - The tenancy agreement.
- 1.5 Our policy explains:
 - Who can succeed
 - The difference between survivorship and other succession
 - Statutory succession
 - Contractual succession under the terms of the tenancy agreement
 - When and how we may exercise discretion when there is no right to succeed
 - What happens when there is no right to succeed
 - How tenancies can be assigned
 - The appeals process.
- 1.6 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
 - making the best and most efficient use of our available housing stock
 - responding promptly to all applications received to succeed and make application forms, advice and assistance available.

2 Policy Statement

- 2.1 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, civil partner or someone who lives with the tenant, as their partner at the time of their death.
- 2.2 Our tenants will have different succession rights depending on the type of tenancy agreement they hold. Some previous Sevenoaks District Council (SDC) 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.
- 2.3 This policy applies to customers living in rented homes owned by us.
- 2.4 It does not apply to leaseholders.
- 2.5 It does not apply to licensees as they have no right to succession.

3 Definitions

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 23rd 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.

Statutory Rights- Legal rights established under the Housing Acts.

Contractual Rights- Rights given to some people through the tenancy agreement, rather than by statute.

Discretionary Rights- When we may use our discretion to offer a new tenancy where there are no succession rights.

Assignment- An assignment is a transfer of the tenancy during the lifetime of the tenant.

4 Types of Succession

4.1 Joint tenants and survivorship

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. Survivorship does not require authorisation from us. The remaining tenant becomes a sole tenant. Our records should be updated to reflect this.

Survivorship counts as a succession and there is no further right of succession after survivorship(s), unless the tenancy agreement gives a secondary succession right.

If the remaining tenant does not live in the property as their only or main home, we may take action to end the tenancy.

4.2 Succession Rights of Assured (Protected) Tenants

4.2.1 If the deceased tenant has a sole tenancy, when 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 automatically where the partner has been occupying the property as their only or principal home at the time of the tenant's death. This is a statutory succession.

Evidence of occupation must be provided.

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

4.2.2 If the tenant was a sole tenant, then a member of the tenant's family may succeed. However, the succession can only take place if the person lived with the tenant for 12 months prior to death.

4.2.3 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).

4.2.4 Where a succession to a family member is granted under the tenancy agreement, for tenancies granted before 1 April 2012 a new tenancy will be granted to the successor.

4.2.4 There is only one right of succession.

4.2.5 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.

4.2.6 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 or she occupied the house over the age of 16, while their parent was the tenant.

4.3 Succession Rights of Assured (Fully) Tenants

4.3.1 On the death of a sole tenant who is not a successor, the tenancy will pass to the tenant's spouse/civil partner (or person who has been living together with a tenant as their spouse/civil partner) under the provisions of the Housing Act 1988, provided that they occupied the premises as their own or principal home at the time of the tenant's death. This is a statutory succession. No new tenancy will be issued.

Evidence of occupation must be provided.

4.3.2 The majority of our (fully) Assured Tenancy agreements will have no additional succession rights to family members however the tenancy agreements should always be checked. For example: some tenancies that came to West Kent as part of a stock transfer may include additional rights.

If the tenancy agreement allows additional succession rights for family members:

- Where a succession to a family member is granted under the tenancy agreement, for tenancies granted before 1 April 2012 a new tenancy will be granted to the successor.
- For tenancies granted on or after 1 April 2012 the tenancy will vest automatically to a qualifying successor so long as:
 - The property was not occupied by a spouse or civil partner
 - The person can succeed in accordance with a term in the tenancy agreement.

4.4 Starter and Fixed Term Tenancies

These tenants do have the right to succeed the remainder of the tenancy period as per conditions of 4.3.1, as long as there is a period of at least two years left on the Fixed Term Tenancy.

There is no right of succession to a sole fixed term assured tenancy of less than two years.

5 Discretionary Tenancies

- 5.1 Discretionary succession is where there are no rights to succeed, but we decide to let someone have a new tenancy in the property because we consider the circumstances to be exceptional. We are under no obligation to exercise discretion.
- 5.2 In cases where the household member being considered for a discretionary offer of a tenancy is particularly vulnerable, we will give special consideration to the circumstances of the case by carrying out a vulnerability impact assessment and reviewing supporting evidence. However, vulnerability alone is not a reason for granting a tenancy over other households in need.
- 5.3 In all cases the household member must demonstrate a housing need by being accepted onto the local authority housing register.
- 5.4 Examples of the factors that we may take into account about the applicant when making our decision may include, but will not be limited to the following:
- Previous successions.
 - How long they have lived at the home.
 - Their relationship to the deceased tenant or any guardianship of the deceased tenant's children.
 - Their housing needs, medical needs and vulnerabilities.

- The rent payable is affordable (either because they can directly afford the rent, or they would be entitled to sufficient Housing Benefit or Universal Credit).
- Use and occupation/mesne profit charges that has been set up whilst making our decision are paid.
- 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.
- Property type and demand for this type of accommodation.

5.5 Discretionary 'succession' is not a legal succession and in these cases, we will issue a new tenancy agreement in line with our Tenure and Allocations policies.

5.6 We will generally not allow a discretionary tenancy, where this would lead to under occupation as determined by our Allocations Policy or relevant lettings plan for the property.

5.7 If the decision is made to offer a discretionary tenancy, it may be offered at another property. We will try to find 'suitable accommodation'. If suitable accommodation is not immediately available, an applicant may be placed on the direct let list until a suitable property becomes available. If a decision is made to offer a discretionary tenancy at another property, only one such offer will be made. If the applicant declines that offer, no further offers will be made, and steps will be taken to recover possession of the deceased tenant's property.

5.8 The Head of Housing has the authority to agree discretionary tenancies.

6 Multiple Successors

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:

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

We will not create a joint tenancy on succession.

7 Inheriting a Tenancy

7.1 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.

- 7.2 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.
- 7.3 We may seek possession of a property where a tenancy is devolved through a will or intestacy. In these circumstances legal advice will be sought.

8 Proof of Residency/Death of Tenant

- 8.1 We will require proof of residency for all succession cases, excluding survivorship, 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. The onus is on the potential successor to provide a sufficient level of evidence. Documents should cover the entire qualifying period.
- 8.2 We will require a copy of the death certificate for all succession cases, including survivorship.
- 8.3 If the deceased tenant was claiming housing benefit, we will check that the council are aware if the person claiming succession was living there.
- 8.4 We may also conduct any other checks we consider necessary to ascertain who was residing in the property in the qualifying period prior to the tenant's death, to avoid fraudulent claims for succession.
- 8.5 If someone is a successor they will take on the same tenancy agreement as the tenant who has died, unless a new tenancy is granted. Where the same tenancy agreement is taken on, this means the successor will become responsible for all areas of the tenancy, including rent account, arrears and condition of the property.

9 Succession to a Minor

- 9.1 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.
- 9.2 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.

10 Terminating a Tenancy

- 10.1 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 requesting them to vacate.
- 10.2 We will allow a reasonable time for non- successors to find alternative accommodation, as long as Use and Occupation payments continue to be made, and the non-successor remains in occupation.

- 10.3 If someone is a non-successor, we will advise them of their rights to apply to the local housing register. 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, causing damage or nuisance could become grounds for excluding the non-successor from being housed in other West Kent properties. Use and Occupation accounts are monitored by the Income team and NHOs. NHOs are responsible for any action relating to the Use and Occupation account.
- 10.4 Arrears of over four weeks will lead to a review of our decision to allow non-successors to remain in occupation or offer alternative accommodation.
- 10.5 When a succession application is refused, and no discretionary tenancy is to be granted a Residents Equality and Risk Impact Assessment should be completed to determine if further support required.

11 Assignment

- 11.1 An assignment can only take place if the original tenant has a contractual right to assign.
- 11.2 An assignment involves a tenant requesting permission to sign over their tenancy rights to another person. The assignment does not create a new tenancy but results in the transfer of the current tenancy agreement to the new tenant or tenants.
- 11.3 We will consider the following types of assignment
- By Mutual Exchange - Tenants 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 ([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: Tenants may have the right to assign to a potential successor if stated in their tenancy agreement.

11.4 Mutual Exchanges

Under a mutual exchange, tenants retain their own rights of succession. This means that if the tenant had the tenancy assigned to them through a mutual exchange and had not already used up their own right of succession on their original tenancy, they would be able to pass on their new tenancy through succession regardless of whether the tenant they exchanged with was a successor. A mutual exchange by assignment does not count as a succession.

11.5 Assignment by Court Order

An assignment does not count as a succession where it is required by a court order.

11.6 Assignment to a would-be successor

We may refuse a request of assignment where the:

- Tenant has rent arrears or any other outstanding breach of their tenancy
- Tenant 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 sheltered housing schemes 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.

12 Appeals

- 12.1 If a succession applicant wishes to challenge a decision on succession, they can do so in writing by email or letter.
- 12.2 The appeal should set out why they feel the decision is not justified.
- 12.3 The Neighbourhood Manager will review the original decision. They will only uphold the appeal if they find that legal requirements or our policy criteria were not met in the original decision

13 Responsibilities

- 13.1 The Head of Housing has overall responsibility for the operation of this policy.
- 13.2 The Neighbourhood Team will be responsible for the day-to-day implementation of the policy in general needs, Sheltered, Extra Care and KEFHA accommodation. A succession approval form is to be completed by a Neighbourhood Housing Officer (NHO) and approved by their manager. If an applicant is not eligible to succeed, the NHO will inform them and explain the reasons for refusing the claim.
- 13.3 The NHO is responsible for service NTQ to end the deceased's tenancy as early as possible and for following the process for serving NTQ on the Public Trustee. The NHO must inform the Allocations Team the week before expiry of the NTQ that a Use and Occupation Account must be set up and inform the resident of the charges due.
- 13.4 The NHO is responsible for monitoring the Use and Occupation account and taking appropriate legal action if payments are not maintained.
- 13.5 The Allocations Team are responsible for setting up Use and Occupation accounts in the first week the charge is due.
- 13.6 Within four weeks of the succession approval the NHO will visit the successor to check there are no issues or see if any advice is needed to enable them to sustain their tenancy.

- 13.7 Applications for direct lets who are awaiting alternative accommodation will be reviewed every two months by the Neighbourhoods and Allocations Teams. The review will be led by the Head of Housing.

14 Regulation and Legislation

- 14.1 The Tenancy Standards states that registered providers must allocate and let their homes in a fair and transparent way that takes the needs of tenants and prospective tenants into account and that their policies must set out their position on granting discretionary succession rights, taking account of the needs of vulnerable household members.
- 14.2 The Localism Act 2011 altered the process for contractual succession rights for family members of assured tenants if their tenancies started on or after 1st April 2012. It also amended section 17 of the 1988 Act to extend the statutory right of succession of assured tenants to tenants with a fixed term assured shorthold tenancy of two years or more.
- 14.3 The 1988 Act was amended by:
- The Civil Partnerships Act 2004 which extended 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.
- 14.4 The Family Law Act 1996 as amended by the Civil Partnership Act
- Sets out rights of non-tenants, spouses and civil partners to retain occupation of the matrimonial home.
- 14.5 Immigration Act 2014
- Sets out how we apply Right to Rent Checks

15 Reporting

At key stages in the process the Neighbourhood Manager will check to cases to ensure that the succession policy and Standard Operation Procedures are complied with. All Use and Occupation cases are reported on the tenancy dashboard and will be monitored every two months.

16 Consultation

An Equality Impact and Resident Impact Assessment have been completed. This policy is largely a statement of the legal position with regards to succession, so consultation was not appropriate

17 Communication

This policy will be published on Bettie and on the website.

18 Appendix 1

Resident Equality and Risk Impact Assessment

Name:	
Address	
Tenancy Type and start	
Reason for completion of Equality and Risk Assessment	
Brief history	

Risk Assessment	
Are there any known risks to the resident's physical or mental wellbeing?	
Is the resident safe in the home that has been provided to them?	
Will the proposed activity have any impacts on the residents' safety and well-being? If yes, please describe.	

What steps are being taken to mitigate the risk to resident safety and well-being?	
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Equality Impact Assessment

Identify here any impact on any of the following protected characteristics:

	Positive impact (Contributes towards promoting equality and eliminating discrimination)	Negative impact (the activity proposed does not promote equality or eliminate discrimination - is so must be justified)	No impact	Reason, and evidence (If there is no impact, please detail what your reasoning is behind this)
Age				
Disability				
Gender Reassignment				
Marriage and Civil Partnership				
Pregnancy and Maternity				
Race				
Religion				
Sex				

	Positive impact (Contributes towards promoting equality and eliminating discrimination)	Negative impact (the activity proposed does not promote equality or eliminate discrimination - is so must be justified)	No impact	Reason, and evidence (If there is no impact, please detail what your reasoning is behind this)
Sexual Orientation				
<i>You may also want to consider Socio-economic status which covers an individual or family's economic and social position in relation to others, based on income, education, and occupation.</i>				
Socio-economic status				

Have you involved any third parties to assist in the identification of or reduction of any impact?	
Does the applicant require an advocate?	
Do you need to involve other/additional services, departments and/or partners. If so, please state.	
Do you need to make any adjustments? If so when and how will this be actioned.	
Do you need more information to carry out the assessment?	

What is your conclusion and Recommendations?	
Justification for Action	
Have you already carried out an interview with the applicant?	
Is it Proportionate?	
Is it Justified?	
Is it necessary?	
Any Other Comments	

Signed (Officer):	
Dated	
Signed (Line Manager)	
Dated	

Summary of key material/changes

- There have been no changes in legislation since the policy in 2018.
- A section clarifying the appeals process added.
- How we deal with discretionary tenancies clarified.
- The law around inherited tenancies stated in the policy.
- Approach to partners who are not married or civil partnered clarified.
- A section including assignment included.