

SUCCESSION POLICY



Reference:	HS_POL_HOU_SUA_3.0	Author:	Neighbourhood Team Manager
Scope:	Housing Solutions	Approved by:	Executive Team
Legislation:	Housing Act 1985 Housing Act 1988 Trust of Land and Appointment of Trustees Act 1996 Civil Partnership Act 2004 Housing and Regeneration Act 2008 Equality Act 2010 Localism Act 2011 UKGDPR 2021 Data Protection Act 2018	Date of approval:	August 2023
Regulatory/ Governance:	Regulator of Social Housing Tenancy Standard	Date of next review:	August 2026
Related Policies:	Tenancy Policy Allocations Policy Equality, Diversity & Inclusion Policy Assignment Policy Mutual Exchange Policy Tenancy Fraud Policy		

1. Policy Statement

- 1.1 The right to succeed to a tenancy differs according to the type of tenancy held and when the tenancy was granted. It is also dependent upon the person applying to succeed to the tenancy meeting certain criteria. With all tenancies, there can only be one succession.
- 1.2 Our Succession Policy helps us to deliver our corporate and strategic aims by:
 - Setting out clear criteria and expectations for residents requesting a tenancy succession
 - Helping to ensure the best use of our stock and to improve flexibility for our residents

2. Scope

- 2.1 This policy relates to all social rented tenants of Housing Solutions who hold an assured or fixed term tenancy.
- 2.2 Starter tenants and licensees have no succession rights
- 2.3 Assured Shorthold tenancies can be succeeded to by a spouse only
- 2.4 Extra Care tenants may have limited succession rights
- 2.5 Successions at sheltered and extra care schemes are subject to age restrictions which may require an offer of alternative accommodation
- 2.6 This policy does not apply to Shared Ownership homes, licences and residential or commercial leases.

3. Roles and Responsibilities

Board	Responsible for delegating approval of this policy to Executive Team.
Executive Team	Responsible for approving this policy and overseeing compliance with this policy.
AD Housing & Resident Engagement	Responsible for overseeing the operational delivery and service quality of succession applications and regularly reviewing the appropriateness and reasonableness of the appeal decisions.
Neighbourhood Team Manager	Responsible for the implementation of this policy; hearing appeal decisions; and the management of the Neighbourhood Team in processing succession applications and for approving succession applications.
Neighbourhood Team Leader	Responsible for ensuring compliance with this policy, the management of the Neighbourhood Team in processing succession applications, and for approving applications.
Housing Officers	Responsible for the receiving, assessing and processing succession applications.
Lettings and Allocation Officers	Responsible for supporting Housing Officers in transferring a tenancy to a successor tenant, ensuring tenancy records are updated on our software systems and any appropriate documents are properly completed and signed.
Customer Contact Centre	Responsible for receiving and dealing with general enquiries about succession applications and transferring residents to Housing Officers for further information and support.

4. Definitions

- 4.1 Our Tenancy Policy sets out the criteria for use of and eligibility for the types of tenancy available
- 4.2 A **Qualifying Successor** is a relative of a deceased tenant who is able to provide evidence that they satisfy the requirements to succeed to the tenancy.
- 4.3 **Survivorship** is when the remaining joint tenant becomes a sole tenant on the death of a joint tenant. Survivorship is a type of statutory succession.
- 4.4 **Statutory succession** is a right set down in legislation to inherit a tenancy on the death of a tenant. In this event, the tenancy does not end following the death of a tenant. The tenancy continues in the name of the successor.
- 4.5 **Contractual succession** is a succession that takes place through an additional right to succession granted through the tenancy agreement rather than a statutory right; the tenancy ends and a new tenancy is created in the name of the successor.
- 4.6 **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.

5. Legislation

- Housing Act 1988 S17
- Localism Act 2011
- Immigration Act 2014 Section 21: Persons Disqualified by Status
- Housing Act 1988 S113 and Schedule 2
- Civil Partnership Act 2004
- Regulator of Social Housing: Tenancy Standard

6. Succession Rights

- 6.1 In the case of a joint tenancy, the tenancy is automatically succeeded by the remaining joint tenant (survivorship), where there has not already been a succession. There is no further right of succession.
- 6.2 In the case of a sole tenancy, succession rights are dependent on the type of tenancy held as described in Section 2 and the tenancy agreement.
- 6.3 Only one succession is allowed and there can be only one successor; there cannot be a joint succession.
- 6.4 The property may be considered unsuitable and an offer of suitable alternative accommodation made if:

- The succession would create under-occupation or overcrowding
 - There are major adaptations and the successor does not need them
 - The successor would remain in a property which has been designated for a specific client group, for example, sheltered housing and they are not in that client group
- 6.5 A succession to a Fixed Term Tenancy is only for the remainder of the current fixed term period, after which the tenancy will be reviewed in accordance with our Tenancy Policy.
- 6.6 A potential successor must be in occupation of the tenancy address as their only or principal home for twelve months.
- 6.7 Where the potential successor fails to provide evidence that they meet the criteria for a statutory succession, we will reject their application and seek possession of the property. This will require a Notice to Quit addressed to the personal representatives of the deceased tenant and also served on the Public Trustee office with the appropriate form and fee. Pre-action protocol letters must also be sent to any occupants.
- 6.8 If there is more than one person claiming succession and the family cannot reach agreement, we will decide to whom the tenancy will pass.
- 6.9 Succession rights are unaffected by a tenancy assignment (see our Assignment Policy) instructed by a court order or a mutual exchange.
- 6.10 Many of our tenancy agreements give a contractual right to succeed to family members if the deceased tenant was not themselves a successor, had no spouse/partner, and if these criteria are met:
- They can prove to our satisfaction that they occupied and have, since the death of the tenant, continued to occupy the premises as their only or principal home
 - They can prove that they are over 18 years old
 - Neither they (nor any spouse or partner of the potential successor) own or have any financial interest in other premises
 - They can prove to our satisfaction that they lived with the tenant continuously since the tenancy started. This must have been notified to us in writing as part of the tenant's household at the commencement of the tenancy and been notified to the local authority in writing for the purposes of Council Tax and any Housing Benefit throughout the entire time of the tenancy.
 - They notify us in writing of their claim to succeed within one month of the tenant's death and provide a copy of the death certificate
 - We determine that the premises are suitable for occupation by the intending successor as described in 6.4
 - The successor clears any arrears of rent and/or remedy any other breach under the tenancy.

7. Requests for succession

- 7.1 Requests to succeed should be made within one month of the tenant's death
- 7.2 A joint tenant's right to succession under the law of survivorship has precedence over all other succession claims.
- 7.3 A person under 18 years old can succeed to a tenancy if the terms and conditions of the tenancy permit, and provided the criteria are satisfied. An equitable tenancy will be granted as a minor cannot hold a legal interest in property. A trustee must be appointed to hold the legal interest of the tenancy on behalf of the minor.
- 7.4 If the deceased tenant leaves a will appointing a personal representative or trustee, the tenancy is held in trust by that person until the minor reaches the age of 18. If there is no will, then the Public Trustee holds the tenancy in trust for the minor or some other appropriate adult such as another family member, may be appointed as trustee.
- 7.5 In all cases where there is no statutory or contractual right to succeed, any person who remains in the property is liable to pay charges for their 'use and occupation' of the property pending a decision as to whether to grant them a new tenancy or recover possession. Charges for use and occupation are usually equivalent to the rent payable for the property.
- 7.6 Housing Solutions will make any necessary decisions regarding claims of succession within 42 days of receipt of the claim.
- 7.7 In the case of a joint tenancy, the remaining tenant has joint and several liability for any arrears together with the estate of the deceased tenant. The arrears will remain on the account.
- 7.8 In the case of a statutory succession the successor will take over the existing tenancy agreement but not any arrears or other breaches. Any arrears that accrue after that date will be the responsibility of the successor tenant.
- 7.9 Where there a contractual right to succeed in the tenancy agreement, it will depend on the terms of the tenancy agreement whether the successor will need to clear any arrears or remedy other breaches first.
- 7.10 Following the succession, we may seek to recover from the deceased tenant's estate any rent arrears or other debts as part of the former tenants' arrears recovery process.
- 7.11 A possession order made before the succession can be enforced against the new tenant. If there is a suspended possession order it will be necessary to apply to the court for an order substituting the new tenant as defendant in the proceedings.

8. Appeals Procedure

- 8.1 Applicants may make an appeal against a decision not to allow a succession in writing or dictated over the phone to a Housing Solutions officer within five working days from the date of refusal.
- 8.2 The Neighbourhood Team Manager will consider the appeal and will advise the applicant in writing of the decision. A decision will be made within ten working days unless an alternative timescale is agreed. The decision of the Neighbourhood Team Manager will be final.
- 8.3 This appeal procedure does not affect the right to use our complaint handling process or make a complaint to the Housing Ombudsman.

9. Equality & Diversity

- 9.1 Housing Solutions recognises the needs of a diverse population and always acts within the scope of its own Equality, Diversity & Inclusion Policy and Equalities Act 2010. Housing Solutions works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. Housing Solutions will record, analyse and monitor information on ethnicity, vulnerability and disability.

10. Confidentiality

- 10.1 Under the Data Protection Act 2018 and UKGDPR, all personal and sensitive organisational information, however received, is treated as confidential. This includes:
 - anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
 - sensitive organisational information.
- 10.2 Housing Solutions employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

11. Review

- 11.1 This policy will be reviewed on a three-yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant Housing Solutions' policy.
- 11.2 Our performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to our Senior Management Team, Executive Team, Board and associated committees.