

POLICY: SUCCESSION

1.0 Introduction

- 1.1 This policy sets out Thames Valley Housing's (TVH's) position in relation to the rights of a relative to take over a tenancy on the death of a tenant. Succession is the transfer of a tenancy following the death of a sole or joint tenant.
- 1.2 The right of succession to a tenancy differs according to the type of tenancy held and when the tenancy was granted, however, with our tenancy agreements there can only be one act of succession to a tenancy.

2.0 Policy Statement

- 2.1 We will deal with all applications for succession in line with relevant legislation.
- 2.2 We will respond promptly and sensitively when information is received that a tenant has died and will, where possible, contact the deceased's next of kin. Contact will also be made with other people residing in the property.

3.0 Objectives

- 3.1 The aims and objectives of this policy are:
 - ▲ To set out clear expectations for potential successors;
 - ▲ To be easily understood;
 - ▲ To ensure the policy makes best use of the Association's housing stock.

4.0 Background Legislation

4.1 Joint Tenancies

Following the death of a joint tenant, the surviving tenant continues the tenancy as a sole tenant under the law of survivorship. Succession by survivorship counts as one act of succession to a tenancy.

4.2 Sole Tenancies

Prior to 1st April 2012 statute granted different succession rights to tenants depending on whether their tenancy was secure or assured. However, the majority of our assured tenants who were granted their tenancy before 1st April 2012 were given the same rights in their tenancy agreement as secure tenants had by statute.

- 4.3 Since 1st April 2012 the Localism Act 2011 changed statutory rights of succession so that it is now the same for both secure and assured tenants. Our new tenancy agreements reflect the amendments made by the Localism Act.
- 4.4 Due to the change in the law and our different tenancy agreements, it is necessary to explain the succession rights under separate headings for 'Secure tenants' and 'Assured tenants'. Although the majority of our tenants are assured tenants we still have some secure tenants (primarily tenancies granted by us before January 1989). It is important to know the type of tenancy you have and the terms of the particular tenancy when looking at succession rights.

5.0 Secure Tenants

- 5.1 Section 87 of the Housing Act 1985 provides that when a sole secure tenant dies the tenancy may be passed on to a "qualified successor". Persons qualified to succeed to a secure tenancy are:
- ▲ The tenant's spouse/partner who was occupying the property as their only or principal home at the time of the tenant's death.
 - ▲ For secure tenancy agreements which commenced prior to 1st April 2012 if there is no spouse then a member of the tenant's family who was living in the property as their only or principal home at the time of the tenant's death and has been living with the tenant for the 12 months prior to the tenant's death is also a qualifying successor.
 - ▲ For secure tenancy agreements which commenced on or after 1st April 2012 another member of the tenant's family can only succeed if the tenancy agreement allows such a succession. If the tenancy agreement does not permit another family member to succeed then they have no right to do so.
- 5.2 Definitions of a family member can be found in section 113 of the Housing Act 1985. They are:
- ▲ A person with whom the tenant lived as husband or wife;
 - ▲ The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece;
 - ▲ A relative by marriage is treated as if they were a blood relative;
 - ▲ Half brothers and sisters should be treated as brothers and sisters;
 - ▲ The stepchild of a person is treated as his or her child.
- 5.3 The Civil Partnership Act 2004 came into force on 5th December 2005. The Act provides that same-sex couples who form a civil partnership have the same rights as those who are in a heterosexual marriage.

- 5.4 Only one statutory succession is allowed in secure tenancies. If the deceased tenant succeeded to the tenancy on the death of the previous tenant, or was a joint tenant and then became the sole tenant, his or her potential successors are not qualified to succeed. An assignment of a secure tenancy to someone who was qualified to succeed will also count as a succession so there can be no further successions.
- 5.5 In relation to secure tenancies which commenced prior to 1st April 2012 where there is a right of succession for family members and there is more than one qualified successor the spouse would take precedence over other relatives. If there is no spouse the eligible relatives should be asked to decide who should hold the tenancy. If they cannot agree, the landlord has the right to choose who should succeed to the tenancy.
- 5.6 If the accommodation is larger than is reasonably required by a successor who is not the deceased tenant's spouse, the landlord can seek possession of the property under Schedule 2, Part III, and Ground 15A of the Housing Act 1985. The Landlord must give the tenant notice seeking possession no earlier than six months, and no later than twelve months, after the former tenant's death. If the property has adaptations for disabled persons and the successor is not disabled then we may use Ground 13 to seek possession. Similarly possession may be sought if the property is part of a scheme let to persons with special needs and the successor does not have such special needs (Ground 15).
- 5.7 The court may only order possession in these situations if suitable alternative accommodation is available for the tenant and it is reasonable to require him or her to give up the property.

6.0 Assured Periodic Tenancies

- 6.1 For sole assured periodic tenancies granted prior to 1st April 2012 the only person who is entitled by statute to succeed is a spouse/civil partner or somebody living with the tenant as such. The spouse/partner has to be living in the property as their only or principle home at the date of the deceased tenant's death and the deceased tenant must not have been a successor him/herself.
- 6.2 For sole assured periodic tenancies granted on or after 1st April 2012 another member of the tenant's family can also succeed by statute but only if the tenancy allows for such a succession. In such cases the succession is automatic and there is no need to grant a new tenancy agreement. If the tenancy agreement does not permit another family member to succeed then they have no right to do so. Many of our newer tenancy agreements give a right to succeed to family members if the deceased tenant was not him/herself a successor had no spouse/partner and only if certain criteria are met such as:
- i) They can prove to the Association's satisfaction that they occupied and have, since the death of the tenant, continued to occupy the Premises as their only or principal home; and
 - ii) They can prove to the Association's satisfaction that they are over 18 years old; and

- iii) They (nor any spouse or partner of the potential successor) do not own any other premises; and
- iv) They can prove to the Association's satisfaction that they lived with the tenant continuously since the tenancy started (they must have been notified to the Association 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 related benefits throughout the entire time of the tenancy); and
- v) They notify the Association in writing of their claim to succeed within 1 month of the tenant's death and provide a copy of the death certificate (at its discretion the Association may allow a longer period); and
- vi) The Association in its absolute discretion determines that the Premises are suitable for occupation by the intending successor (for example in terms of being under or over occupied or adapted); and
- vii) They agree to clear any arrears of rent and/or remedy any other breach under the tenancy.

6.3 Although in relation to tenancies granted before 1st April 2012 family members cannot succeed by statute, many of our tenancies give a 'contractual' right for family members to remain in the property provided they meet criteria set out in the tenancy agreement. It is important to look at the particular tenancy agreement in each case as the contractual criteria will be different depending on when the tenancy was granted.

6.4 In the majority of pre-1st April 2012 contractual succession cases it will be necessary to grant the contractual 'successor' a new tenancy agreement. In such cases, unless the deceased tenant's tenancy agreement says otherwise, the Association will give the successor a new tenancy agreement in the form currently being used by the Association. A Right to Rent check will be carried out on the potential successor and all adult household members.

6.5 In an assured tenancy case whether a deceased tenant is him/herself a successor or not will depend on the definition in the tenancy agreement and who is succeeding but our tenancy agreements only allow one statutory succession. So if the deceased tenant succeeded to the tenancy on the death of the previous tenant, or was a joint tenant and then became the sole tenant, his or her potential successors are not qualified to succeed. Succession can also not take place if there has already been an assignment to someone who was qualified to succeed unless a statutory provision overrides this. It is important to look at the tenancy agreement and section 17 of the Housing Act 1988 for the definition of 'successor' in each assured tenancy case.

7.0 Assured Shorthold Periodic Tenancies (Probationary Tenancies)

7.1 Assured shorthold tenancies which are periodic have a statutory right of succession for a spouse or common law partner. No other family member is entitled to or given a contractual right to succeed.

8.0 Assured Shorthold Fixed Term Tenancies

8.1 For assured shorthold fixed term tenancies granted prior to 1st April 2012 the right of statutory succession does not apply during any fixed term tenancy but does apply once the fixed term has expired.

8.2 For assured shorthold fixed term tenancies granted on or after 1st April 2012 by a Registered Provider which have a fixed term of 2 or more years (referred to below as Fixed Term Tenancies) there is a right of succession for a spouse or common law partner. Another family member can only succeed if the tenancy agreement makes provision for it. If the tenancy agreement does not permit another family member to succeed then they have no right to do so.

9.0 Fixed Term Tenancies (2 years +)

9.1 With effect from February 2015 we introduced Fixed Term tenancies to properties with adaptations which have 2 or more bedrooms, and to properties with 4 or more bedrooms. Fixed term tenancies will be issued in some circumstances, including where the tenant has not held a social housing tenancy before or their current social housing tenancy commenced after 1st April 2012 or where the new tenancy will be an Affordable Rent (AR).. Our Fixed Term Tenancies offer the same succession rights to spouse/partners and family members as our newer periodic assured tenancy agreements.

10.0 Licensees

10.1 Licensees do not usually have the right to succession.

11.0 Implementation

11.1 Requests for succession should be made by successors within 1 month of the tenant's death.

11.2 A joint tenant's right to succession under the law of survivorship has precedence over all other succession claims.

11.3 If there are more than two joint tenants, the tenancy reduces to a smaller joint tenancy and continues to reduce until there is only one remaining 'sole' tenant.

11.4 In the case of a sole tenancy (where the tenant was not him or herself a successor) the deceased tenant's spouse (i.e. husband or wife) or common law partner (including same sex

partners) will automatically succeed to the tenancy if they were living at the property at the time of the death as their only or principal home, and if there has been no previous succession (as defined in the Housing Acts).

- 11.5 If there is no spouse or common law partner (including same sex partner), and the tenancy allows it, family members may apply to succeed if they meet the qualifying criteria depending on their tenancy type and when it was granted.
- 11.6 A minor (i.e. a person under 18 years old) can succeed to a secure tenancy or to an assured tenancy if the tenancy allows it (our newer assured tenancies do not) and provided that all the relevant conditions are satisfied. If successful, this would result in an equitable tenancy being granted as a minor cannot hold a legal interest in property. If the deceased tenant leaves a will appointing a personal representative or trustee, the tenancy is held in trust by that person until the child becomes an adult i.e. reaches the age of 18 years. If there is no will then the Public Trustee holds the tenancy in trust for the minor. The Association **must not** hold the tenancy on trust for the minor.
- 11.7 If there is more than one person claiming succession and the family cannot reach agreement, the Association will decide who the tenancy will pass to.
- 11.8 If the tenancy is assured and the property is unsuitable for the potential or qualifying successor we may take steps to recover possession of the property. The steps taken will depend on the terms of the tenancy agreement. In our newer tenancy agreements, part of the qualifying criteria for a family member to succeed, is that the property is considered by us to be suitable for the potential successor's needs. If we do not consider it suitable the criteria is not met and there will be no qualifying successor. In other cases where the contractual criteria for qualification are met we may use Ground 9 (suitable alternative accommodation is available) to seek to recover possession of the property.
- 11.9 If the deceased tenant leaves his/her tenancy in their will to somebody who does not meet our qualification criteria for a succession then we will use Ground 7 (which is a mandatory ground) to recover possession of the property. In all other cases where there is no person entitled to succeed we will use notices appropriate to the tenancy type to terminate the deceased tenant's tenancy prior to action to recover possession of the property.
- 11.10 In all cases where there is no statutory 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.
- 11.11 In all cases where there is no statutory right to succeed and the Association is contemplating granting a new tenancy pursuant to a contractual succession right or granting a discretionary tenancy a Right to Rent check will be carried out on the applicant and all potential adult household members – see section 16 below for more details.

12.0 Discretionary Succession

- 12.1 This is where there are no rights to succeed, but we make a decision to let someone have a new tenancy because we consider the circumstances to be exceptional.
- 12.2 In all cases, the remaining occupant(s) will need to demonstrate housing need and must have lived at the property as their only or principal home. The person(s) will be treated as a direct applicant i.e. they will be interviewed and will be notified in writing of our final decision.
- 12.3 Examples of factors that we may take into account when making our decision may include, but will not be limited to the following:
- ▲ The length of time the applicant has shared the former tenant's home.
 - ▲ The length of time the applicant has been a member of the tenant's family.
 - ▲ The vulnerability and needs of the applicant.
 - ▲ Whether the applicant and other adult household members have a Right to Rent.
 - ▲ The circumstances in which the tenancy was granted or, as the case requires, the circumstances in which the applicant and his/her partner became a tenant under the tenancy.
 - ▲ The housing needs and housing resources of the applicant and any relevant child.
 - ▲ The financial resources of the applicant.
 - ▲ The likely effect of any decision by us not to exercise our powers on the health, safety, or well-being of the parties and of any relevant child.
 - ▲ The nature of the parties' relationship.
 - ▲ The length of time during which they cohabited.
 - ▲ Whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility.
 - ▲ The length of time that has elapsed since the parties ceased to live together.
 - ▲ The suitability of the parties as tenants.
 - ▲ The demand for housing in that area.
 - ▲ Third party nomination rights of the local authority, or other party, to the property.
 - ▲ Whether granting of a discretionary tenancy would be the best use of our stock.
- 12.4 If a decision is made to offer a discretionary tenancy it may be offered at another property. We will try to find 'suitable accommodation' which may be within our own stock, or that of another housing provider, however, this suitable accommodation may not be immediately available. If a decision is made to offer a discretionary tenancy at another property, only one such offer will be made and 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.

12.5 In all discretionary tenancy cases a new tenancy agreement will be granted, and there will be no further succession rights, unless a statutory provision overrides this.

13.0 Rent Arrears & Other Breaches on Succession

13.1 In the case of a joint tenancy, the remaining tenant has joint liability for any arrears together with the estate of the deceased tenant. The arrears will remain on the account.

13.2 In the case of a person who succeeds by statute they shall take over the existing tenancy agreement but not any arrears or other breaches.

13.3 Where there is no statutory right to succeed but there is a contractual right to succeed in the tenancy agreement, it will depend on the terms of the particular tenancy agreement as to whether the contractual successor will need to clear any arrears or remedy other breaches first. Our newer tenancy agreements require this but older agreements may not.

13.4 Following the succession, we can also pursue the deceased tenant's estate to recover rent arrears or other debts as part of the former tenants' arrears recovery process.

13.5 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.

14.0 Information Sharing

14.1 All applications and tenants are subject to Data Protection Act 2018. At the point of interview applicants are asked to sign a S171 declaration within the terms of the 1996 Housing Act. This declaration warns that it is an offence to knowingly withhold or provide false information. In addition, applicants are made aware that information can be shared with other housing providers or relevant agencies. This can include information sharing protocols with public bodies.

14.2 Where specific permissions are required to make enquiries with individual support workers, the applicants are required to sign a declaration giving their permission. Identification markers on our computer databases are also used to denote risks, vulnerability or for regard to be given to special requirements.

15.0 Appeals Procedure

15.1 Where there is no statutory or contractual succession, applicants may make an appeal against a decision not to allow a discretionary succession. Additional information should be provided in support of their appeal and this will then be considered by the Housing Services Manager.

15.2 The appeal should be in writing or dictated over the phone to a member of staff within five working days (weekdays not including public holidays) from the date of refusal. The

Housing Services Manager will investigate the reasonableness of the appeal and will advise the applicant in writing of the decision. This process will be concluded in ten working days (not including public holidays) unless a mutually agreed alternative timescale is agreed.

- 15.3 If the applicant disputes this decision there is a second right of appeal to the Director of Residential Services. This must be made within 5 working days of the initial appeal outcome and will include the reasons for the appeal. The Director of Residential Services will give a written response based on a review of the initial appeal decision within 10 working days. The decision of the Director of Residential Services will be final.
- 15.4 This appeal procedure does not interfere with an individual's right to make a complaint to the Independent Housing Ombudsman or to request an agency or organisation to make the appeal on their behalf.

16.0 Right to Rent & Succession

16.1 The Immigration (Residential Accommodation)(Prescribed Cases) Order 2014 says that a residential tenancy agreement is not to be treated as 'being entered into' (and hence no Right to Rent checks are needed) where such tenancy arises:

- ▲ by virtue of a Court Order
- ▲ by or under any statutory provision
- ▲ by operation of law
- ▲ at the end of a fixed term between the same parties

So if the succession has occurred by statute or by the law of survivorship on the death of a joint tenant, no Right to Rent checks are needed as the tenancy will have arisen under a statutory provision or in the case of the death of a joint tenant, by operation of law. There are however situations, as described in this policy, with the Association's different tenancy agreements where the 'succession' does not occur by statute, for example:

- viii) if the tenancy is an assured tenancy that commenced pre 1st April 2012 and the 'succession' is to a non-partner i.e another family member, such 'successions' do not occur by statute but by a contractual provision in the tenancy agreement so a Right to Rent check must be carried out
- ix) discretionary succession cases where there is no 'right' to succeed but the Association decide to grant a new tenancy due to exceptional circumstances so again a Right to Rent check must be carried out

17.0 Other Useful Policies

- ▲ Lettings Policy
- ▲ Transfer Policy
- ▲ Tenancy Policy
- ▲ Assignments & Other Tenancy Changes Policy
- ▲ Mutual Exchange Policy

18.0 Policy Information

Policy owner: Housing Services Manager

Approved by: Director of Residential Services

Last review date: October 2016

Next review date: October 2019

